

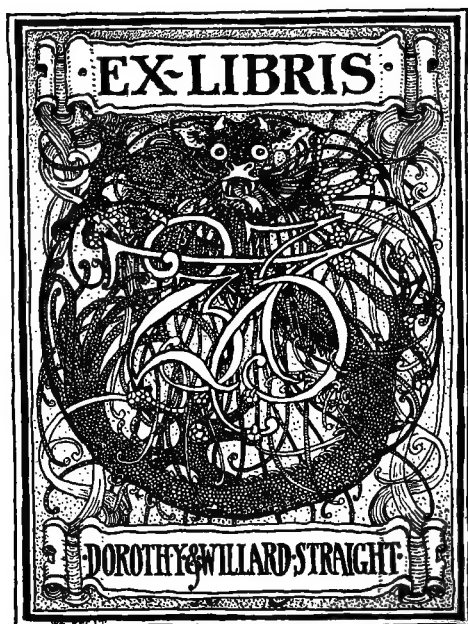
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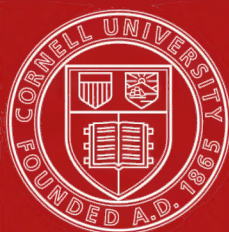
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INTERSTATE TRANSPORTATION

A TREATISE
ON THE
FEDERAL REGULATION
OF
INTERSTATE TRANSPORTATION AND
COMMON CARRIERS

INCLUDING
Jurisdiction of the Interstate Commerce Commission

REVISED TO DATE
Containing the Mann-Elkins Bill of June 18, 1910

BY
HARRY C. BARNES
Of the Cincinnati Bar

VOL. II

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HARRY C. BARNES

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CHAPTER XXX.

FREIGHT TARIFFS OR RATE SCHEDULES.

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§ 456. Publication of Rates and Charges for Transportation.**¶ A. MANDATE OF THE STATUTE AS TO PUBLICATION OF RATES.**

The Act to Regulate Commerce requires that every common carrier subject to its provisions shall publish schedules showing all the rates and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established.¹

If no joint rate over the through route has been established, the several carriers in such through route shall print, as aforesaid, the separately established rates and charges applied to the through transportation.²

¶ B. JOINT TARIFFS MUST SPECIFY NAMES OF PARTICIPATING CARRIERS.

The Act requires the names of the several carriers which are parties to any joint tariff to be specified therein.³

¶ C. PRESUMPTION THAT RATES HAVE BEEN DULY PUBLISHED.

Where suit at law for damages, because of an alleged unjust or discriminatory freight charge, is brought in the Federal Court, that Court in the absence of an averment in the petition that the carrier has failed to post and file its tariff, is bound to presume that the carrier has complied with the law, and that the charge complained of is made thereunder. Where such is the case relief can only be obtained through the Commission.⁴

¹ Act to Regulate Commerce. Section 6.

² Ibid.

³ Ibid.

⁴ Clement v. L. & N. R. Co. (1907), 153 Fed. Rep. 979.

¶ D. CARRIER'S TARIFF MAKING REFERENCE TO TARIFF OF COMPETING CARRIER DOES NOT MEET THE REQUIREMENT OF THE LAW.

The purpose in requiring rates to be published and posted is to inform the public of the rates of transportation at which shipments can be made.⁵ A notation in the tariff of one carrier making reference to the tariff of some competing carrier, a tariff which may not be accessible to the prospective shipper, cannot meet the requirements of the law that the rate charged shall be published and posted.⁶

¶ E. IMPORTANCE OF PROPER PUBLICITY IN RATES.

The importance of a clear statement of rates and proper publicity of the same is forcefully stated in *United States v. Illinois Terminal Railway Company*,⁷ in which it is said:

The chief object of the Act to Regulate Commerce is the prevention of discrimination. Carriers, being engaged in a public employment, must serve all members of the public on equal terms. This was the doctrine of the common law. It has been explicitly stated and strengthened by the successive acts to regulate commerce. The requirement of the Act that all rates should be published is perhaps the chief feature of the scheme provided for the effective outlawing of all discriminations. If this portion of the Act is not strictly enforced, the entire basis of effective regulation will be lost. Secret rates will inevitably become discriminating rates. Whenever discriminating rates or practices are made public, a thousand forces of self-interest and of public policy will be set at work to reduce them to fairness and equality.

§ 457. Filing Tariffs, Classifications, Exception Sheets, Supplements, Concurrences, etc., with the Interstate Commerce Commission.

¶ A. MANDATE OF THE ACT AS TO FILING OF RATE SCHEDULES WITH THE COMMISSION.

The Act to Regulate Commerce provides that every common carrier subject to its provisions shall file with the Commission schedules showing all the rates and charges for transportation between different points on its own route and be-

⁵ *Pitts & Son v. St. L. & S. F. Rd. Co. et al.*, 10 I. C. C. R. 684.

⁶ *Ibid.*

⁷ *United States v. Illinois Terminal Railway Co.*, 168 Fed. Rep. 546.

tween points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate has been established.⁸

If no joint rate over the through route has been established, the several carriers in such through route shall file as aforesaid, the separately established rates and charges applied to the through transportation.⁹

The above provisions apply to all traffic, transportation, and facilities subject to the Act.¹⁰

¶ B. CONCURRENCE OF PARTICIPATING CARRIERS.

The concurrence of every carrier participating in the tariffs, etc., as stated in the preceding paragraph, must be on file with the Commission or accompany the tariff or supplement.¹¹

See *Section 478, post*.

¶ C. FILING BY PROPER OFFICER OR DESIGNATED AGENT.

Tariffs, classifications, and exception sheets and supplements thereto shall be filed with the Commission by proper officer of the carrier or by an agent designated to perform that duty.¹²

¶ D. TWO COPIES OF ALL TARIFFS MUST BE FILED WITH THE COMMISSION.

Common carriers and agents are directed, in filing schedules in compliance with the statute, to transmit two (2) copies of each tariff, supplement, classification, or other schedule of rates or regulations for the use of the Commission, both copies to be included in one package and under one letter of transmittal.¹³

¶ E. HOW TARIFFS FILED WITH THE COMMISSION MUST BE ADDRESSED.

All tariffs sent for filing with the Interstate Commerce Com-

⁸ See note 1, *supra*.

⁹ *Ibid*.

¹⁰ *Ibid*.

¹¹ Rule 13, Tariff Circular 17-A.

¹² *Ibid*.

¹³ Rule 14, Tariff Circular 17-A.

mission must be addressed, "Interstate Commerce Commission, Bureau of Tariffs, Washington, D. C."¹⁴

¶ F. TARIFFS MUST BE DELIVERED TO THE COMMISSION FREE FROM ALL CHARGES OR CLAIMS FOR POSTAGE.

No tariff or supplement will be accepted by the Commission for filing unless it is delivered to the Commission, free from all charges or claims for postage.¹⁵

¶ G. TARIFFS MUST BE DELIVERED TO COMMISSION WITHIN FULL STATUTORY TIME.

All tariffs or supplements must be delivered to the Commission within the full thirty days required by law before the date upon which such tariffs or supplements are stated to be effective. No consideration will be given to or for the time during which a tariff or supplement may be held at the Postoffice Department because of insufficient postage.¹⁶

For tariffs and supplements issued on short notice under special permission of the Commission full thirty days' notice is not required, but literal compliance with the requirements of the Commission for notice named in any permission granted by the Commission will be exacted and in accord with the policy and practice above outlined.¹⁷

¶ H. DISPOSITION OF TARIFFS RECEIVED BY COMMISSION TOO LATE TO GIVE STATUTORY NOTICE.

A tariff or a supplement that is received by the Commission too late to give the Commission the full thirty days' notice required by law will be returned to the sender, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such tariff or supplement was received and the date of attempted correction.¹⁸

¹⁴ Rule 14, Tariff Circular 17-A.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

In other words, when tariff or a supplement is issued and as to which the Commission is not given the statutory notice it is as if it had not been issued and full statutory notice must be given of any reissue thereof. No consideration will be given to telegraphic notices in computing the thirty days' notice required.¹⁹

§ 458. Posting of Tariffs or Rate Schedules.

¶ A. MANDATE OF THE ACT AS TO POSTING OF RATE SCHEDULES.

The Act to Regulate Commerce requires that every common carrier subject to its provisions shall keep open to public inspection schedules showing all the rates and charges for transportation on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established.²⁰

If no joint rate over the through route has been established, the several carriers in such through route shall keep open to public inspection, as aforesaid, the separately established rates and charges applied to the through transportation.²¹

Copies of such schedules are required by the Act to be kept posted for the use of the public in two public and conspicuous places in every depot, station or office of such carrier where freight is received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.²²

The above provisions apply to all traffic, transportation, and facilities subject to the Act.²³

¶ B. PURPOSE OF THE PROVISION OF THE ACT REQUIRING RATE SCHEDULES TO BE POSTED.

The comprehensive terms of the Act with regard to the posting of rate schedules at the stations and depots of carriers were

¹⁹ Rule 14, Tariff Circular 17-A.

²⁰ See note 1, *supra*.

²¹ *Ibid*.

²² *Ibid*.

²³ *Ibid*.

apparently intended to serve the double purpose of thus affording shippers and patrons the opportunity to ascertain for themselves the lawful charges for the service sought by or rendered to them, and of also guarding against the adoption and use of tariff rates or rules without giving full public notice thereof.

The requirement of the Act that rates shall be published is imposed in order that a shipper may ascertain by inspection exactly what it will cost him to transport his property, and also what the cost will be to his competitor of having his property transported.²⁴

The clear purpose of the law is that every person may have reasonable opportunity to gain through proper effort on his part full knowledge as to the rates published and charged by carriers. In order that practicable and useful regulations and practice might be established, authority was vested in the Commission, as explained in *Section 461, post*, to modify the terms of the Act in this particular.²⁵

¶ C. RULES GOVERNING THE POSTING OF TARIFFS AT STATIONS.

At a general session of the Interstate Commerce Commission, held at Washington, D. C., on the 2d day of June, A. D. 1909, it formulated the following rules and regulations governing the posting of tariffs at stations:

“Under the authority conferred upon the Commission by Section 6 of the Act, to modify its requirements as to publishing, posting, and filing of tariffs, the Commission issues the following order, in connection with which it must be understood that each carrier has the option of availing itself of this modification of the requirements of Section 6 of the Act or of complying literally with the terms of the Act. If such modification is accepted by a carrier it must be understood that misuse of the privileges therein extended or frequent misquotation of rates on the part of its agents will result in cancellation of the privileges as to that carrier. It should also be understood that in so modifying the requirements of the Act the Commission

²⁴ United States v. C. & A. Ry. Co. (1906), 148 Fed. Rep. 646; see also Pitts & Son v. St. L. & S. F. Rd. Co. et al. (1905), 10 I. C. C. R. 684

²⁵ Twenty-First Annual Report of I. C. C. (1907).

expects a continuation by carriers of the practice of furnishing tariffs to a reasonable extent to frequent shippers thereunder:

“Every carrier subject to the provisions of the Act to Regulate Commerce (excepting those to which special and specific modifications have heretofore been granted) shall place in the hands and custody of its agent or other representative at every station, warehouse, or office at which passengers or freight are received for transportation, and at which a station agent or a freight agent or a ticket agent is employed, all of the rate and fare schedules which contain rates and fares applying from that station, or terminal or other charges applicable at that station, including the schedules issued by that carrier or by its authorized agent and those in which it has concurred. Such agent or representative shall also be provided with all changes in, cancellations of, additions to, and reissues of such publications in ample time to thus give to the public, in every case, the thirty days’ notice required by the Act.

“Such agent or representative shall be provided with facilities for keeping such file of schedules in ready-reference order, and be required to keep said files in complete and readily accessible form. He shall also be instructed and required to give any information contained in such schedules, to lend assistance to seekers for information therefrom, and to accord inquirers opportunity to examine any of said schedules, without requiring or requesting the inquirer to assign any reason for such-desire, and with all the promptness possible and consistent with proper performance of the other duties devolving upon him. He shall also furnish upon request therefor quotation in writing of rates via such carrier’s line not contained in the tariffs on file at that station. Carrier may arrange for such agent to refer such requests to a proper officer of the company, but the quotation must be furnished within a reasonable time and without unnecessary delay.

“Each of such carriers shall also provide and each of such agents or representatives shall also keep on file copies of the current I. C. C. issues of the indices of the tariffs of that carrier.

“Each of such carriers shall also provide, either in its indices

of tariffs or in separate publication or publications, which must be kept up to date, be given I. C. C. numbers and be filed with the Commission, an index or indices of the tariffs that are to be found in the files at each of its several stations or offices. Such index shall be kept on file and be open to inspection at each of such several stations or offices as hereinbefore provided. If such indices are prepared for a system of road or for a number of stations or offices they must be printed and may be arranged under a system of station numbers and alphabetical list of stations. If arranged for individual stations or offices they may be printed or typewritten. All such indices must be of size 8 by 11 inches.

“Each of such carriers shall require its traveling auditors to check up each station’s or office’s file of tariffs at least once in each six months, unless it employs one or more traveling tariff inspectors who will make such inspections and checks.

“Each of such carriers whose lines reach any of the cities in the following list, either over its own rails or by trackage rights, or by boat line, or by ferry, shall provide and maintain at each of said cities so reached by it, and at such additional points as may from time to time be designated by the Commission, complete files of the tariff publications which it issues or is a party to, together with indices of same as hereinbefore required:

Alabama, Montgomery.
 Arkansas, Little Rock.
 California, San Francisco.
 Los Angeles.
 Colorado, Denver.
 Connecticut, Hartford.
 Florida, Jacksonville.
 Georgia, Atlanta.
 Illinois, Chicago.
 Springfield.
 Indiana, Indianapolis.
 Iowa, Des Moines.
 Louisiana, New Orleans.
 Maine, Portland.
 Maryland, Baltimore.
 Massachusetts, Boston.
 Worcester.
 Michigan, Detroit.
 Minnesota, St. Paul.
 Minneapolis.
 Missouri, St. Louis.
 Kansas City

Mississippi, Jackson.
 Montana, Helena.
 Nebraska, Omaha.
 New York, New York.
 Buffalo.
 North Carolina, Charlotte.
 Ohio, Cincinnati.
 Cleveland.
 Oklahoma, Oklahoma City.
 Oregon, Portland.
 Pennsylvania, Philadelphia.
 Pittsburg.
 South Carolina, Columbia.
 South Dakota, Sioux Falls.
 Tennessee, Memphis.
 Chattanooga.
 Texas, Fort Worth.
 Houston.
 Utah, Salt Lake City.
 Virginia, Richmond.
 Washington, Seattle.
 Wisconsin, Milwaukee.

“Each of such files shall be in charge of an employee who will give information and assistance to those who may wish to consult such file, and each such file shall be kept open and accessible to the public during ordinary business hours and on business days.

“Each of such carriers whose lines do not so reach any of the above-named cities shall also provide at least one point on its line a complete file of the tariffs which it issues or is a party to, together with indices of same as hereinbefore required, which file will be in charge of an employee of the carrier, who will give desired information and assistance to those who may wish to consult such file. This file of tariffs shall be open and accessible to the public during ordinary business hours and on business days.

“If a subsidiary or small connecting line has authorized the parent company or principal connecting line to publish and file for it all its tariffs, tariffs so issued and filed on its behalf will be included in the complete public tariff files of the parent or issuing line, and it will not be necessary for such subsidiary or small line to maintain an additional complete public file.²⁶

“Each of such carriers shall also provide and cause to be posted and kept posted in two conspicuous places in every station waiting-room, warehouse, or office at which schedules are so placed in custody of agent or other representative notices printed in large type, and reading as follows:

“(A) Complete public file [or files] of this company's tariffs is [are] located at, in the city of [or the cities of and]. The rate and fare schedules applying from or at this station and indices of this company's tariffs are on file in this office, and may be inspected by any person upon application and without the assignment of any reason for such desire.

“The agent or other employee on duty in the office will lend any assistance desired in securing information from or in interpreting such schedules.

“At exclusive freight stations or warehouses and at exclusive passenger stations or offices carriers may, under this order, place and keep on file only the freight or passenger schedules,

²⁶ Rule 86, Con. Rul. Bul. No. 4 (June 25, 1908).

respectively, and in such cases the posted notices may be varied to read:

“The freight rate [or, passenger fare] schedules applying from or at [or, from] this station and index of this company’s freight [or, passenger] tariffs are on file in this office, etc.

“Each of such carriers shall also require its agent or other employee in charge of tariffs at each point where complete public file is not kept to post from time to time in a public place in waiting room or office a brief bulletin notice to the effect that rates from that station on certain commodities have been changed.”²⁷

¶ D. EFFECT OF FAILURE TO POST TARIFFS ON THE LEGALITY OF RATE FILED WITH COMMISSION.

In the case of *Texas & Pacific Ry. Co. v. Cisco Oil Mill*,²⁸ the plea was presented that a rate schedule not having been lawfully posted in “two public and conspicuous places in every depot, waiting room, office,” etc., the rate schedule itself was unlawful and therefore not binding upon the carrier. The Supreme Court held, that the filing of the schedule with the Commission and the furnishing by the railroad company of copies to its freight office incontrovertibly evidenced that the tariff of rates contained in the schedule had been established and put in force as mentioned in the first sentence of the section, and the railroad company could not have been heard to assert to the contrary.

Any action based upon the failure of carriers to post its tariffs as provided by Section 6 of the Act must be in accordance with the procedure defined in the statute.²⁹

²⁷ In the Matter of Modification of the Provisions of Section 6 of the Act with Regard to Posting Tariffs at Stations, issued at a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908. Compliance with the order as to all available tariffs was required not later than October 1, 1908, and full compliance in every instance not later than January 1, 1909.

²⁸ *Texas & Pacific Ry. Co. v. Cisco Oil Mill*, 204 U. S. 449; 51 L. ed. 562, 27 Sup. Ct. 358.

²⁹ *Paxton Tie Co. v. Det. Southern Rd. Co.* (1905), 10 I. C. C. R. 422; *Rea v. M. & O. Rd. Co.* (1897), 7 I. C. C. R. 43.

¶ E. LAWFULLY PUBLISHED RATE BINDING ON BOTH SHIPPER
AND CARRIER.

A tariff filed with the Commission in the manner prescribed by law and on statutory notice is a lawful tariff and lawfully binding on both carriers and shippers, though it was not posted at stations full thirty days prior to its effective date.³⁰

A lawfully published rate speaks with equal authority to the shipper and the carrier, and both are chargeable with notice of the rate and the route over which a rate is made applicable.³¹

¶ F. WHERE DAMAGES RESULT TO THE SHIPPER ON ACCOUNT OF
THE FAILURE OF THE CARRIER TO POST RATE SCHEDULE.

For full consideration, see *Section 422, ante*.

¶ G. NOTICE PLACED IN DEPOT REFERRING SHIPPER TO AGENT.

The provisions of the sixth section of the Act to Regulate Commerce are not complied with by carrier posting a notice in the station or depot stating that the tariffs may be inspected upon application to the carrier's agent.³²

¶ H. POSTING TARIFFS ON EXPORT AND IMPORT TRAFFIC.

See *Section 506, Paragraph E, post*.

**§ 459. Jurisdiction of the Interstate Commerce Commission
over the Publication, Posting and Filing of Tariffs
or Rate Schedules.**

The Act to Regulate Commerce empowers the Commission to determine and prescribe the form in which schedules required by the Act to be kept open to public inspection shall be prepared and arranged and to change the form from time to time as shall be found expedient.³³

The Act also authorizes the Commission in its discretion and for good cause shown, to allow changes upon less than

³⁰ Pueblo Transportation Association v. Southern Pacific Co. et al., 14 I. C. C. R. 82.

³¹ Poor Grain Co. v. C. B. & Q. Ry. Co. et al., 12 I. C. C. R. 469.

³² See note 29, *supra*.

³³ See note 1, *supra*.

statutory notice, or modify the requirements of the Act in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.³⁴ In pursuance of this authority the Commission has promulgated a code of rules and regulations governing the issuance, publication and filing of tariffs and schedules of rates, as explained in a former section of this book. All these rules and regulations are treated of at length throughout this work, under this chapter and other appropriate headings.

The Commission is an administrative body. The rates, regulations, and practices which it establishes within its jurisdiction become rules of action which may and must enter into the business dealings of this country. It may be necessary to change from time to time these rulings as varying conditions require, but they should never be changed except upon due notice to the public, which is affected by them.³⁵

§ 460. Notice required for Publication of Rates and Changes therein.

¶ A. STATUTORY NOTICE.

Section 6 of the Act to Regulate Commerce as changed by the Hepburn Amendment of 1906, provides that:

“No change shall be made in the rates, and charges, or joint rates and charges, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days’ notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule *then in force* and the time when the changed rates or charges will go into effect; and the proposed changes shall be shown by *printing new schedules*, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection.”

The law as in force prior to the Hepburn Amendment of 1906 provided that in case of advances in rates, the public

³⁴ See note 1, *supra*.

³⁵ *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.*, 15 I. C. C. R. 91.

and the Commission must be given ten days' previous notice thereof, and in cases of reduction in rates, three days' previous notice must in like manner be given. The amended law provides that in *all cases* of changes in rates and charges applicable to interstate traffic, the public and the Commission shall be given thirty days' previous notice.³⁶

¶ B. RATE CHANGES FILED AND PUBLISHED MUST BECOME EFFECTIVE AND CAN ONLY BE CHANGED ON THIRTY DAYS' NOTICE.

The provisions of the Act quoted in the preceding paragraph plainly refer to rates which have already become effective, and also applies the term "proposed changes" to rates which have not become effective. It follows that after notice of a change in rates has been filed and published the new rates must be allowed to go into effect, and cannot be withdrawn, canceled or superseded except upon notice filed and published for at least thirty days after the date when the rates have become effective.³⁷

A tariff may provide that it will expire upon a date specified therein and which is at least thirty days subsequent to the date upon which it becomes effective, or a tariff may contain a notation that certain rates therein stated will expire upon a date therein specified which is at least thirty days subsequent to the date on which such rates become legally effective, and this will be legal notice of the cancellation or withdrawal of such tariff or of such rates.³⁸ Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice. Therefore a provision in a tariff that the tariff or any part of it will expire upon a given date is not a guaranty that the tariff or such part of it, will remain effective until that date. Such provision must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way.³⁹

³⁶ Twentieth Annual Report of I. C. C. (1906).

³⁷ Rule 54, Tariff Circular 17-A.

³⁸ Ibid.

³⁹ Ibid.

¶ C. POWER OF INTERSTATE COMMERCE COMMISSION TO ALLOW
CHANGES ON LESS THAN STATUTORY NOTICE.

The Act authorizes the Commission in its discretion and for good cause shown to allow changes upon less than thirty days' notice, either in particular instances or by a general order applicable to special or peculiar circumstances and conditions.⁴⁰ This provision was inserted to meet unforeseen emergencies and to prevent any hardship that might result from the requirement of the amended law.⁴¹

The Commission in pursuance of this authority has not only permitted changes in rates on less than statutory notice in particular instances, but has issued general orders applicable to special conditions and circumstances, as will be noted from the following paragraphs and elsewhere.

However, where the establishment of certain rates will to some extent affect the market of a given commodity, in order that dealers and producers may have an opportunity to adapt their affairs to newly-created conditions, the Commission usually orders such changes in rates to be provided for upon full statutory notice.⁴²

Carriers must comply fully with the requirements of the law respecting the filing, publication, and taking effect of proposed rates, unless upon application and for good cause shown the Commission in the exercise of the authority upon it, allow rates to be changed or withdrawn upon less than thirty days' notice, or by a formal order otherwise modify such requirements.⁴³ No regulation or rule of the Commission is authority to change rates or issue tariffs on less than statutory notice unless so specifically provided in the rule or regulation.⁴⁴

The Commission has stated, that, "The requirement for

⁴⁰ See note 1, *supra*.

⁴¹ See note 36, *supra*.

⁴² *Big Blackfoot Milling Co. v. Northern Pacific Ry. Co. et al.*, 16 I. C. C. R. 173; *Kalispel Lumber Co. et al. v. Great Northern Ry. Co. et al.*, 16 I. C. C. R. 164.

⁴³ See note 37, *supra*.

⁴⁴ *Ibid*.

thirty days' notice of changes in rates is regarded by the Commission as a wise and healthy one, and it is not the policy or intent of the Commission to exercise the authority conferred upon it to grant exceptions to that requirement except under circumstances which fully justify such action and which do not involve probable discriminations or resultant rate disturbances. As improvement in tariffs progresses it is believed that the authority for establishing rates on less than statutory notice will be justified in a smaller number and a smaller percentage of cases.⁴⁵

¶ D. POWER OF COMMISSION TO REJECT SCHEDULES WHICH DO NOT GIVE LAWFUL NOTICE OF EFFECTIVE DATE.

The Act to Regulate Commerce (*as amended June 18, 1910*) gives the Commission authority to reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and provides that any schedule so rejected by the Commission shall be void and its use shall be unlawful.^{45a}

¶ E. REQUESTS FOR PERMISSION TO AMEND TARIFFS ON LESS THAN STATUTORY NOTICE.

As stated above the Act authorizes the Commission in its discretion and for good cause shown, to permit changes in tariff rates on less than statutory notice.

The Commission stated that it is believed that this authority should be exercised only in instances where special or peculiar circumstances or conditions fully justify it.⁴⁶ Confusion and complication must follow indiscriminate exercise of this authority.

Applications to Commission.

Such applications must be in proper form and over the signature of the president, vice-president, general traffic manager, assistant general traffic manager or general freight agent,

⁴⁵ Twenty-Third Annual Report of I. C. C. (1909).

^{45a} Section 6, Act, as amended June 18, 1910.

⁴⁶ Rule 58, Tariff Circular 17-A.

specifying title.⁴⁷ The Commission has requested that as far as possible these requests be sent by mail and not by telegraph. Action will be taken only on receipt of the verified application.⁴⁸

¶ F. WHERE FULL NOTICE WAS GIVEN BY COMPETING CARRIER.

Desire to meet the rates of a competing road or line which has given the full statutory notice of change in rates will not of itself be regarded as good cause for allowing changes in rates on a notice of less than thirty days.⁴⁹

¶ G. AMENDMENT OF JOINT TARIFF ON LESS THAN STATUTORY NOTICE.

A request from one carrier, party to a joint tariff for permission to amend such tariff on less than statutory notice necessarily raises a question of some doubt as to the wishes or concurrence of other interested carriers also parties to the tariff. It is desirable and proper that such permission given by the Commission should affect alike all parties to the tariff that is to be amended under it. The Commission therefore ruled:

Applications by Carrier or Agent Authorized to File the Tariff.

That when a carrier gives an agent authority to file tariff or tariffs and supplements thereto in its name, place and stead, or concurrence in tariff or tariffs and supplements thereto which another carrier or its agent may file thereunder, the agent or carrier to whom such authority or concurrence is given has, under the terms of the authority or concurrence, the power and the right to request, in the name and on behalf of the carriers participating in such tariff or tariffs permission to amend same on less than statutory notice.⁵⁰

Request must come from one who issues the Tariff.

Such requests as to joint tariffs must be made by the agent

⁴⁷ Rule 58, Tariff Circular 17-A.

⁴⁸ Ibid.

⁴⁹ Rule 58, Tariff Circular 17-A.

⁵⁰ Ibid.

or the carrier that is authorized to file the tariff and in making them form same as that prescribed for use of individual carrier shall be used, except that the request must state that it is made in the name and on behalf of all carriers that are parties to the tariff, and that formal authority to file the tariff, or formal concurrence in the tariff, is on file with the Commission from each of said carriers.⁵¹

Concurring Carriers Bound by Act of Authorized Agent.

Request will be signed and verified by the agent or officer who makes it, and every carrier that has, by formal authority or concurrence, made itself a party to such tariff will be held bound by the act of its agent under such authority or by its concurrence.⁵²

¶ H. PERMISSION TO CHANGE RATES ON SHORT NOTICE
LIMITED TO EMERGENCY OR NECESSITY.

This authority will be exercised only in cases where actual emergency and real merit are shown. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the omissions or mistakes together with a full statement of the circumstances attending such omission or error and be presented with reasonable promptness after issuance of the defective tariff.⁵³

¶ I. REDUCTION OF JOINT RATE TO EQUAL SUM OF LOCALS.

Where a joint rate or fare is in effect by a given route between any points which is higher than the sum of the locals between the same points, by the same or another route, and such joint rate or fare has been in effect thirty days or longer, such higher joint rate or fare may, until further notice from the Commission, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting and filing with the Commission one day in advance *a supplement to or a reissue*

⁵¹ Rule 58, Tariff Circular 17-A.

⁵² Rule 58, Tariff Circular 17-A.

⁵³ Ibid.

of the tariff in which the joint rate or fare so reduced appears, which supplement or reissue shall show the reduced rate or fare; shall bear notation that it is effective on less than statutory notice "by authority of Rule 56 of Tariff Circular 17-A;" shall show on title page, or in connection with such item, by identifying references and I. C. C. numbers, the tariffs that contain the locals which make up the new joint rate or fare; except that, if the joint rate so reduced is contained in a strictly class rate tariff, the reduced rate will be published in a new commodity tariff or in a supplement to or reissue of a tariff which contains commodity rates and in which all carriers whose lines make up the route over which the rate applies have concurred, and which is issued by the same carrier or agent that issued the tariff which contained the joint rate so reduced. Such tariff, supplement or reissue must bear on its title page, or in connection with such item, the notation: "Issued under authority of Rule 56, Tariff Circular 17-A. The joint rate [or, rates] hereby reduced appears in Tariff, I. C. C. No., item [or, page], and the factors from which the new rate herein shown as equaling the sum of the locals are found in tariff, I. C. C. No., item [or, page], and tariff, I. C. C. No., item [or, page]"

Except when a new commodity rate is established to supersede a higher class rate this rule limits the authority to change rates or fares thereunder to changes that are announced in supplements or to reissues of the tariffs in which the joint rates or fares so reduced appear, and each such supplement or reissue shall show specifically on its title page the authority under which it is made effective on less than statutory notice and definite and distinct reference to the locals which are used to make up the reduced joint rate or fare.⁵⁴

¶ J. TARIFFS NAMING RATES TO AND FROM POINTS ON NEWLY
CONSTRUCTED LINES OF ROAD, INCLUDING BRANCHES
AND EXTENSIONS OF EXISTING ROADS.

On newly constructed lines of road, including branches

⁵⁴ Rule 56, Tariff Circular 17-A.

and extensions of existing roads, individual rates and also joint rates may be established in the first instances by the carrier owning or operating such newly constructed line to and from points on such new line by posting a tariff of such rates and filing the same with the Commission one day in advance. Such tariff must bear notation that it applies to stations on newly constructed line to or from which no rates have heretofore applied, and give reference to this rule. Tariffs or supplements to tariffs issued by other carriers or joint agents establishing the rates to or from or via such newly constructed line may be issued only under statutory notice or special permission for shorter time. It will be the Commission's policy to grant such permissions in such instances so as to give the carrier and shippers fullest efficiency of such new lines, and in connection with the preparation of such joint publications there is ample time within which to secure such permission.⁵⁵

The above rule applies to *newly constructed lines only*.⁵⁶

¶ K. TARIFFS COVERING TRANSPORTATION OF CIRCUS OUTFITS.

The Act to Regulate Commerce as amended June 29, 1906, applies to the transportation of circuses and other show outfits, but the Commission recognizes the peculiar nature of this traffic and the difficulty of establishing rates thereon in advance of shippers' request describing the character and volume of the traffic offered, and has therefore entered a general order authorizing carriers to establish rates on circuses and other show outfits by tariff to become effective one day after filing thereof with the Commission, and relieving them from the duty of posting such tariffs in their stations. Such tariffs may consist of a proper title page reading "as per copy of contract attached," and to it may be attached a copy of the contract under which the circus is moved. As far as practicable general rules or regulations governing the fixing of such rates should be regularly published and filed.⁵⁷

⁵⁵ Rule 57, Tariff Circular 17-A.

⁵⁶ Ibid.

⁵⁷ Rule 63, Tariff Circular 17-A.

§ 461. **Rules and Regulations affecting Rates, such as Switching, Terminal, Drayage, Refrigeration, Car-Service, Storage and Elevation Charges, and Diversion, Reconsignment and Transit Privileges, and Allowances to Shippers must be shown in Tariffs.**

¶ A. MANDATE OF THE STATUTE.

The Act to Regulate Commerce states that the schedules printed in accordance with its provisions by common carriers shall state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of the rates and charges, or the value of the service rendered to the shipper or consignee.⁵⁸

The Supreme Court has held that carriers separately state the terminal charges for delivering live stock beyond their own lines to the Union Stock Yards in Chicago, as required by the Act to Regulate Commerce, as amended June, 1906, where their tariff schedules inform shippers that the live-stock rates for transportation to Chicago, apply only to deliveries at the carriers' own yards and that, for transportation to the Union Stock Yards, a stated additional charge will be made, the amount of such charge being entered, not upon the general freight charges of the companies, but as a separate item.⁵⁹

¶ B. DUTY OF CARRIERS TO ESTABLISH JUST AND REASONABLE REGULATIONS.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) makes it the duty of all common carriers subject to its provisions to establish, observe and enforce just and reasonable regulations and practices affecting rates.

⁵⁸ See note 1, *supra*.

⁵⁹ *I. C. C. v. Stickney et al.* (1909), 215 U. S. 66, 54 L. ed. —, 30 Sup. Ct. 66, affirming 164 Fed. Rep. 638.

¶ C. PURPOSE OF REQUIREMENT OF PUBLICATION OF RULES AND REGULATIONS AFFECTING RATES.

Section 6 of the Act requires that carriers shall file tariffs with the Commission showing all their rates, fares and charges and all privileges and facilities granted or allowed, and also all rules and regulations which in anywise change or effect their rates or the value of the service rendered to the passenger or shipper. The purpose of this is to secure to the public knowledge of the rate to be charged by carriers for services rendered. No proper purpose would be served by stating the amount of the charge unless the services and privileges covered by that charge are also stated. Whenever any service is rendered beyond the ordinary receiving, transporting and delivering of freight the precise character of that service should appear in the printed schedule.^{59a}

¶ D. GENERAL RULES OF THE COMMISSION.

Rules or regulations which in any wise change, affect or determine any part or the aggregate of a carrier's rates, fares or charges must be shown separately upon the carrier's posted schedules of rates, fares and charges; and any such rules or regulations promulgated by the carrier in circulars issued *independently of its rate schedules* and without making reference thereto are not lawfully in force. Rules and regulations which, if enforced, would result in changing or affecting rates or charges shown on published schedules must be notified to the public for the time required by law for the other rate changes. The notice should set forth the changes proposed to be made in the schedules then in effect, and such changes must be shown by printing new schedules or be plainly indicated upon the schedules in force at the time.⁶⁰

Any practice of a carrier which operates to alter, modify or change its rates must be fully and clearly set forth upon its published tariffs of rates and charges to be affected thereby.⁶¹

^{59a} Schultz-Hansen Co. v. Southern Pacific Co. et al. (1910), 18 I. C. C. R. 234.

⁶⁰ Suffern, Hunt & Co. v. I. D. & W. Ry. Co. et al., 7 I. C. C. R. 255.

⁶¹ Spillers & Co. v. L. & N. Rd. Co. (1899), 8 I. C. C. R. 364, follow-

The Interstate Commerce Commission, by virtue of its power to modify the requirements of the Act as to the publication, posting and filing of tariffs and to determine and prescribe their form, has made the following rulings:

Each carrier must publish, "with proper I. C. C. numbers, post, and file separate tariffs which shall contain in clear, plain and specific form and terms all the terminal charges and allowances, such as arbitraries, switching, icing, storage, elevation, diversion, reconsignment, transit privileges, and car service, together with all other privileges, charges, and rules which in any way increase or decrease the amount to be paid on any such shipment as stated in the tariff which contains the rate applicable to such shipment, or which increase or decrease the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith, and shall also state whether or not the rate published by the initial carrier from point of origin to ultimate destination will apply. If the through rate does not apply it must be as of the date of shipment from point of origin."⁶²

"If such privilege is granted or charge is made in connection with the rate under which the shipment moves from point of origin, the initial carrier's tariff which contains such rate must also show the privilege or the charge or must state that shipments thereunder are entitled to such privileges and subject to such charges according to the tariffs of the carriers granting the privileges or performing the service, as 'lawfully on file with the Interstate Commerce Commission.'"⁶³

¶ E. RECONSIGNMENT PRIVILEGES AND RULES.

The privilege of reconsignment is of value to the shipper, and in order to avoid discrimination it is necessary for the

ing *Colorado Fuel & Iron Co. v. Southern Pac. Co.*, 6 I. C. C. R. 488, and *Suffern, Hunt & Co. v. I. D. & W. R. Co.*, 7 I. C. C. R. 255; see also *Amer. Warehousemen's Association v. Ill. Cent. Rd. Co. et al.* (1898), 7 I. C. C. R. 556.

⁶² Rule 10, Tariff Circular 17-A.

⁶³ *Ibid.*

carrier that grants such privilege to publish in its tariff that fact together with the conditions under which it may be used and the charge that will be made therefor. Such rules should be stated in terms that are not open to misconstruction.⁶⁴ Some carriers do not count a change of consignee which does not involve a change of destination as a reconsignment, while others do consider it a reconsignment and charge for it as such.⁶⁵ The Commission holds the view that without specific qualifications, the term "reconsignment" includes changes in destination, routing, or consignees.⁶⁶ If a carrier wishes to distinguish between such changes in its privileges or charges it must so specify in its tariff rules.⁶⁷

The privileges embodied in a separate reconsignment tariff issued by one carrier cannot be availed of, or applied to movements, under a joint tariff to which that carrier and two others are named as parties, unless the latter tariff, by express reference to the former, so provides.⁶⁸

¶ F. TERMINAL CHARGES.

The rates which carriers are required by the statute to publish, file and adhere to without deviation cover, not merely the carriage, but services in receiving and delivering the property as well.⁶⁹

It is not unlawful for a carrier in its schedule of rates to segregate its rates so as to make a distinct charge for transportation and a separate charge for terminal service.⁷⁰ However, where a carrier undertakes to carry freight at a given rate to a certain point, the presumption is that such rate includes adequate compensation for terminal services.⁷¹

⁶⁴ Rule 74, Tariff Circular 17-A.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Washington Broom & W. W. Co. v. C. R. I. & P. Ry. Co.* (1909), 15 I. C. C. R. 219.

⁶⁹ *Phelps & Co. v. T. & P. Ry. Co.* (1893), 4 I. C. R. 44, 6 I. C. R. 36, 4 I. C. C. R. 363.

⁷⁰ *I. C. C. v. C. B. & Q. Ry. Co.* (1902), 186 U. S. 320; 22 Sup. Ct. Rep. 824; 42 L. ed. 1182.

⁷¹ *I. C. C. v. C. B. & Q. Ry. Co.*, 186 U. S. 320, 22 Sup. Ct. 824, 42 L. ed. 1182.

¶ G. REFRIGERATION CHARGES.

When charges for refrigeration are applied in the transportation of perishable freight, such charges should be published and filed with the Commission and adhered to exactly as all other charges for transportation are published and observed. The same considerations of justice and public policy, which require this in case of the freight rate, apply to the refrigeration charge.⁷²

A railroad company engaged in interstate commerce in its schedules of rates filed with the Interstate Commerce Commission pursuant to the Act to Regulate Commerce, may state separately its rates for the carriage of ordinary commodities of a particular class and its charge for icing cars when commodities are of a character requiring to be shipped under refrigeration.⁷³ The Commission has the same jurisdiction to inquire into the justice and reasonableness of refrigeration charges as of any other charge for the transportation of passengers or property.⁷⁴

¶ H. TARIFFS REGULATING SWITCHING OR TERMINAL CHARGES BETWEEN CARRIERS.

See *Section 491, post*.

¶ I. DEMURRAGE ON INTERSTATE SHIPMENTS.

In General.

The Act to Regulate Commerce requires that carriers shall publish, post, and file "all terminal charges * * * which in any wise change, affect, or determine * * * the value of the service rendered to the * * * shipper or consignee," and all such charges become a part of the "rates and charges" which the carriers are required to demand, collect, and retain. Such terminal charges include demurrage charges.⁷⁵

⁷² In the Matter of Transportation and Refrigeration of Fruit, etc., 10 I. C. C. R. 360; same, 11 I. C. C. R. 129.

⁷³ Knudsen-Ferguson Fruit Co. v. Mich. Cent. R. Co. (1906), 148 Fed. Rep. 968, 79 C. C. A. 46; writ of certiorari denied by Supreme Court in 204 U. S. 671, 51 L. ed. 672, 27 Sup. Ct. Rep. 786.

⁷⁴ In the Matter of Charges for Transportation and Refrigeration of Fruit (1905), 11 I. C. C. R. 129.

⁷⁵ Rule 75, Tariff Circular 17-A.

On March 16, 1908, the Commission decided that demurrage rules and charges applicable to interstate shipments are governed by the Act to Regulate Commerce, and therefore are within its jurisdiction and not within the jurisdiction of State authorities. Any other view would open a wide door for the use of such rules and charges to effect the discriminations which the Act prohibits.⁷⁶

Demurrage rules and charges must be observed as strictly as transportation rules and charges. The Commission cannot, therefore, recognize as lawful any rule governing demurrage, the application of which is dependent upon the judgment of some person, or which provides for exemption therefrom in certain exigencies in the creation of which the carrier has no part.⁷⁷

The requirements of the law with respect to the publication, posting and filing of "all terminal charges, * * * and all other charges which the Commission may require" removes from the carrier and from the shipper the right which existed under the common law to contract in reference to demurrage charges on any basis other than that specifically set forth in the carrier's published tariffs.^{77a}

Failure of Carriers to make Reference in Tariff of Rates to Car-Service Tariff.

In a particular case⁷⁸ the car-service tariff, which named the demurrage rules, was properly filed and posted and was well known to the shippers. It was enforced against the public generally. The tariff of rates did specify that the movement of traffic thereunder would be subject to car-service rules, and only those filed and published, therefore, could apply. The mere failure to refer by number to the car-service tariff in the

⁷⁶ Rule 75, Tariff Circular 17-A.

⁷⁷ Ibid.

^{77a} Peale, Peacock & Kerr v. C. R. R. Co. of N. J. (1910), 18 I. C. C. R. 25.

⁷⁸ Cudahy Packing Co. v. C. & N. W. Ry. Co. (1907), 12 I. C. C. R. 446.

tariff of rates could in no way relieve the complainant shipper from the payment of demurrage.

¶ J. PUBLICATION OF TRANSIT PRIVILEGES AND RULES AND REGULATIONS AFFECTING THE SAME.

The statute requires that the established schedules shall show "all privileges or facilities granted or allowed and any rules or regulations which in any wise affect * * * the value of the services rendered to the * * * shipper or consignee."⁷⁹ Privileges such as milling, sorting and mixing or blending freight in transit materially affect the value to the shipper and the cost to the carrier of the transportation and should be shown in the published tariffs.⁸⁰ A transit privilege being of value to the shipper, in order to avoid discrimination it is necessary for a carrier that grants such privilege to publish in its tariffs that fact, together with the conditions under which it may be used and the charge that will be made therefor. Such rules should be stated in terms that are not open to misconstruction.⁸¹

If stop-over privileges are granted for any purpose, all the facts and circumstances connected therewith should be clearly stated in the published tariff, so that the public generally may enjoy their benefits.⁸²

Whether the transit privilege is granted to grain, cotton, or other commodities, the fact should be plainly stated upon the tariff, together with the conditions upon which the privilege will be allowed.⁸³

¶ K. ABSORPTION OF SWITCHING CHARGE.

No switching or other terminal charge should be allowed by a carrier except under a plain and specific tariff provision therefor.⁸⁴

⁷⁹ See note 1, *supra*.

⁸⁰ *Shiel & Co. v. Ill. Cent. Rd. Co. et al.* (1907), 12 I. C. C. R. 210.

⁸¹ See note 64, *supra*.

⁸² *Re Rates and Practices of M. & O. Rd. Co.* (1903), 9 I. C. C. R. 373.

⁸³ *Central Yellow Pine Association v. V. S. & P. Rd. Co. et al.* (1904), 10 I. C. C. R. 173.

⁸⁴ *Leonard et al. v. C. M. & St. P. Ry. Co.* (1907), 12 I. C. C. R. 492.

¶ L. RULES PRESCRIBING MINIMA AND MAXIMA WEIGHTS AND REGULATIONS AFFECTING SAME MUST BE STATED IN CARRIERS' SCHEDULE.

The sixth section of the Act to Regulate Commerce provides that every common carrier subject to its provisions shall keep open to public inspection schedules showing the rates and fares and charges which are in force at the time; that the "schedules posted as aforesaid by any common carrier shall contain the classification of freight in force and shall also state separately the terminal charges, and any rules or regulations which in any wise affect or determine any part of the aggregate of such aforesaid rates, fares, and charges." Rules fixing maxima and minima weights on commodities come within this statute. The railroads contended that the word "separately" authorizes the issuance of circulars containing rules or regulations independently of and without reference to the rate sheets. In that part of Section 6, the Act specifies what the schedules of rates, fares, and charges shall contain, and what they shall state, but separate schedules are not thereby authorized for rules or regulations, nor for terminal charges. All that the word "separately" can be construed to mean in the connection in which it is used, is that the transportation charges and the terminal charges and any rules or regulations, etc., shall be separately stated on the schedules of rates, fares, and charges. Whether a rule or regulation concerning transportation can lawfully be established by the issuance of a schedule or document which neither prescribes rates, fares, or charges, nor refers to any rate or fare schedule, depends upon the nature of the rule or regulation. If rules or regulations "in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges," they must be stated *upon* the schedules of such rates, fares, and charges. This is the plain reading of the statute and to any one at all familiar with the large number of rate sheets in force for interstate transportation from the great majority of railroad stations the necessity of connecting the rate with any rule or regulation affecting that rate is obvious.⁸⁵

⁸⁵ See note 60, *supra*.

The minimum weight upon which carload rate is based is a part of the rate, because the charges on the shipment are determined by such minimum weight. The publication, posting, and filing of the rate and of the minimum weight are therefore equally necessary, and it is also equally necessary that both be observed.⁸⁶

¶ M. STORAGE CHARGES.

The storage of freight is of considerable importance, and where goods are held in warehouses for part-lot distribution is of great value to shippers, and especially so to the class of manufacturers or dealers largely engaged in supplying those staple commodities which are in common demand through the country.⁸⁷ To the extent of its value such privilege lessens the aggregate compensation paid by shippers to carriers for transportation and terminal services.⁸⁸ The charges made for such service, and all rules and regulations which in any wise change, affect, or determine such aggregate compensation, are plainly required by the statute to be shown by the carriers upon their published rate schedules.⁸⁹

Storage rates and regulations enforced by common carriers subject to the Act to Regulate Commerce must be published at their stations and filed with the Commission.⁹⁰

The privilege embodied in a separate storage tariff issued by one carrier cannot be availed of, or applied to movements, under a joint tariff to which that carrier and two others are named as parties, unless the latter tariff by express reference to the former so provides.⁹¹

¶ N. DRAYAGE OR TRANSFER CHARGES.

The Act does not bar a carrier from providing for costs of

⁸⁶ Rule 66, Tariff Circular 17-A.

⁸⁷ *American Warehousemen's Association v. Ill. Cent. Rd. Co.* (1898), 7 I. C. C. R. 556; see also *Penna. Millers' State Association v. P. & R. Ry. Co. et al.*, 8 I. C. C. R. 531.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Blackman, Jr., v. Southern Ry. Co.*, 10 I. C. C. R. 352.

⁹¹ See note 68, *supra*.

transfer in making delivery to a certain carrier, but if it so provides it must publish and file a tariff showing where the transfer will be made, the kind of transfer service required, and the charges to be exacted therefor.⁹²

A shipper is entitled to notice of a transfer charge other than one coming to him through the collection of the charge from his consignee, and as he is not obliged to follow his shipment and make the transfer himself, he is entitled to the protection afforded by a published definite rate.⁹³

¶ O. ALLOWANCES TO SHIPPERS.

Allowances to Owners of Tank Cars.

Mileage or other allowance paid by carriers to the owners of private cars, such as tank cars, refrigerator cars, stock cars, etc., should be published and filed the same as all other rules or regulations affecting rates.

Allowance for Grain Doors Furnished by Shippers.

A carrier may not lawfully reimburse shippers for the expense incurred in attaching grain doors to box cars unless expressly so provided in its tariff. There is a material difference between the furnishing of service or facilities to carriers by one who is not a shipper and the furnishing of the same facilities or services by one who is a shipper.⁹⁴

Allowances for Car-Door Boards used in the Transportation of Coal in Stock Cars.

The requirement of Section 6 that the schedule posted and filed shall contain "any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee," plainly requires publication of allowances of this character.

⁹² Schwager & Nettleton v. Gr. Nor. Ry. Co. (1907), 12 I. C. C. R. 521.

⁹³ Schwager & Nettleton v. Gr. Nor. Ry. Co., 12 I. C. C. R. 521.

⁹⁴ Rule 78, Con. Rul. Bul. No. 4 (June 1, 1908).

The carrier could at no time make an allowance at variance with its tariff, and no private understanding or agreement between parties can alter the requirement of the statute in this respect.⁹⁵

Expense Incurred in Preparing Cars for Shipments can not be paid by Carrier in the absence of Tariff Provisions therefor.

Not having box cars available for the movement of machinery, cattle cars were supplied at the request of the shipper, who lined them with tar paper and felt in order to protect his shipments from weather conditions. *Held*, That in the absence of tariff authority the carrier cannot lawfully reimburse the shipper for the expense so incurred.⁹⁶

¶ P. RULES GOVERNING LOADING AND UNLOADING OF FREIGHT.

Services rendered by carriers in loading and unloading car-load freight and charges for such services are analogous to other terminal services and charges such as demurrage, milling-in-transit, storage, switching, etc., and the charges for and the precise character must be published in the tariffs.^{96a}

§ 462. Carriers prohibited from engaging in Transportation subject to the Act to Regulate Commerce unless they file and publish Rates and Charges thereon.

No carrier is permitted to engage in the transportation of property, as defined by the Act, unless the rates and charges upon which the same is transported by said carrier have been filed and published in accordance with the provisions of the Act.⁹⁷

§ 463. Tariffs distinguishing between Shipments handled by Steam and Electrical Power.

An amendment to a tariff provided: "The above rates will

⁹⁵ Victor Fuel Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. R. 119.

⁹⁶ Rule 19, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

^{96a} Schultz-Hansen Co. v. Southern Pacific Co. et al. (1910), 18 I. C. C. R. 234.

⁹⁷ See note 1, *supra*.

only apply on shipments by steam power and will not apply when handled by electrical power." *Held*, That the limitation of the rates to shipments handled by steam power is unlawful and must be eliminated from the tariff.⁹⁸

§ 464. Phraseology used in Tariffs.

¶ A. TARIFFS MUST BE PLAIN AND INTELLIGIBLE.

The Act to Regulate Commerce contemplates not only just and reasonable rates, but plain and intelligent rates.

Complication, intricacy, and involution invite, if they do not intend, injustice, inequality and discrimination.

A rate or a tariff published and filed with the Commission cannot be held to be legal merely because of that fact; it must also be plain and intelligible.⁹⁹

The only satisfactory method of publishing rates is to definitely state the charges fixed between points clearly specified without burdening or confusing the public with involved calculations, or with scrutinizing a series of supplements to determine whether a particular rate has been changed since the original tariff was issued.¹⁰⁰

It is the duty of common carriers, under the Act, to print, publish and file tariffs showing rates which are so simplified that persons of ordinary comprehension can understand them; and a notation in the tariff of one carrier making reference to the tariff of some competing carrier does not meet the requirements of the law that a rate charged shall be published and filed.¹⁰¹

The Commission in construing the meaning of the phrase "import traffic" stated that, "whatever is within the meaning of the term 'import traffic' must necessarily be a matter of construction, and in arriving at such construction the point of origin of the traffic, the method and mode of transportation

⁹⁸ Rule 2, Con. Rul. Bul. No. 4 (Nov. 4, 1907).

⁹⁹ *Porter et al. v. St. L. & S. F. R. R. Co. et al.*, 15 I. C. C. R. 1.

¹⁰⁰ *Colorado Fuel & Iron Co. v. Southern Pacific Co. et al.* (1895), 6 I. C. R. 488.

¹⁰¹ See note 5, *supra*.

into this country, and the point of destination must be considered. The phrase 'import traffic' is so vague and indefinite as to invite rather than prevent numerous controversies as to what is and what is not covered thereby.

"The application of a tariff should be stated so clearly as to prevent misinterpretation, misunderstanding, or misconstruction. 'Import traffic' may be import traffic when taken from the ships' side, and it may be import traffic after it has been stored at the port of entry for a substantial period, and it might be claimed still to be import traffic after it had been merchandised at the port of entry. It is therefore essential if misunderstandings and misinterpretations are to be avoided, that the carriers shall clearly define the phrase 'import traffic' and similar phrases when used in their tariffs."¹⁰²

¶ B. TARIFFS ARE TO BE CONSTRUED ACCORDING TO THEIR
LANGUAGE.

The law compels carriers to publish and post their schedules of charges upon the theory that they will be informative. A shipper who consults them has a right to rely upon their obvious meaning. He cannot be charged with knowledge of the intention of the framers or the carrier's canons of construction or of some other tariff not even referred to in the one carrying the rate. The public posting of tariffs will be largely useless if the carrier's interpretation is to be dependent upon tradition and the arbitrary practices of a general freight office.

The Commission has long since repudiated the suggestion that railroad officials may be looked to as authority for the construction of their tariffs;¹⁰³ in which Judge Cooley stated that: "A classification sheet is put before the public for its information. It is supposed to be expressed in plain terms, so that the ordinary business man can understand it, and, in connection with the rate sheets, can determine for himself what he can be lawfully charged for transportation. The committee who prepared this classification have no more authority in construc-

¹⁰² *Payne et al. v. M. L. & T. R. & S. Co. et al.*, 15 I. C. C. R. 185.

¹⁰³ *Hurlburt v. L. S. & M. S. Ry. Co.*, 2 I. C. C. R. 122; 2 I. C. R. 81.

tion than anybody else, and they must leave the document, after they have given it to the public, to speak for itself."

Tariffs are construed according to their language. The Commission refuses to recognize any other criterion.¹⁰⁴

¶ C. TECHNICAL TERMS AND PHRASES, AS USED IN TARIFFS,
DEFINED.

The term "per ton" and "net ton," when used in tariffs, will, in the absence of qualifying words, be held to mean a ton of 2,000 pounds. The terms "gross ton" and "long ton" and "ton of 2,240 pounds" will be held to mean a ton of 2,240 pounds.¹⁰⁵

¶ D. LIMITING USE OF THE TERMS "COMMON POINTS," "GRAIN PRODUCTS," AND SIMILAR PHRASES IN TARIFFS.

The terms "common points," "Southeastern territory," or similar terms shall not be used in any tariff for the purpose of indicating the points from or to which rates named therein apply, unless a full list of such points is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list.¹⁰⁶

The terms "grain products," "forest products," "petroleum and its products," "cottonseed products," or similar terms must not be used in any tariff for the purpose of indicating the articles to which the rates apply, unless a full list of the articles intended to be included in and covered by such terms is printed in the tariff or specific reference is given to I. C. C. number of the issue that contains such list.¹⁰⁷

¶ E. IMPROPER AND UNLAWFUL TARIFF PROVISIONS.

A carrier's tariff contained the following rule:

"The ——— Railway reserves the right to route through to destination property delivered to it for transportation at the through rates shown in this tariff; and every carrier par-

¹⁰⁴ Newton Grain Co. v. C. B. & Q. Rd. Co. et al., 16 I. C. C. R. 341.

¹⁰⁵ Rule 131, Con. Rul. Bul. No. 4 (Jan. 4, 1909).

¹⁰⁶ Rule 6, Tariff Circular 17-A.

¹⁰⁷ Ibid.

ticipating in such transportation shall have the right, in cases of necessity, including floods, embargoes, and blockades, to forward said property by any carrier between the point of shipment and the point to which the rate is given. All additional risks and increased expense incurred by reason of change in route in cases of necessity, including floods, embargoes and blockades, shall be borne by the owner of the goods and be a lien thereon."

Held, That this rule is improper and unlawful.¹⁰⁸

A tariff contained a rule providing that:

"When freight cannot be disposed of at a point held for sufficient amount to realize by sale both freight and car service, or storage charges, demurrage charges may be refunded, waived, or canceled."

Held, That the performance of a transportation service determines the obligation of the carrier to collect and of the shipper to pay the published rates therefor and no subsequent fact, having no relation to the service, can lawfully be made the basis for a refund or other departure from such rules. The provision is therefore unlawful *per se* and cannot be accepted as authority for a waiver, refund, or cancellation of the tariff charges even as to a shipment made while the provision was contained in the published tariff.¹⁰⁹

§ 465. Different Kinds of Freight Tariffs defined.

¶ A. LOCAL TARIFFS.

Local tariffs apply only to traffic between points on the lines of the issuing carrier.¹¹⁰

¶ B. JOINT TARIFFS.

Joint tariffs are those which contain or are made up from rates that extend over the lines of two or more carriers and that are made by agreement between such carriers.¹¹¹ They

¹⁰⁸ Rule 146, Con. Rul. Bul. No. 4 (Feb. 8, 1909).

¹⁰⁹ Rule 145, Con. Rul. Bul. No. 4 (Feb. 8, 1909).

¹¹⁰ Rule 29, Tariff Circular 17-A.

¹¹¹ Tariff Circular 17-A.

imply an agreement between two or more roads for through carriage at a single aggregate charge which is usually less than the sum of their separate charges.¹¹² They contain rates applying to traffic between points on the lines of two or more carriers.¹¹³

¶ C. BASING TARIFFS.

Basing tariffs contain rates to or from certain specified basing points where no specific through or joint rate exists, together with definite rules and regulations as to the use and application of such basing rates.¹¹⁴

¶ D. INTERDIVISION TARIFFS.

Interdivision tariffs apply only to traffic between points on different divisions of the line of the issuing carrier.¹¹⁵ They may, however, under proper concurrences, shown in the tariff, include rates to and from points on directly connecting subsidiary lines.¹¹⁶

¶ E. PROPORTIONAL TARIFFS.

Proportional tariffs establish rates of carriage which are lower between given points when the traffic has undergone transportation before reaching the first point, or is to be further transported after reaching the second, than the rates charged on like traffic which originates at one of such points and terminates at the other.¹¹⁷

¶ F. DISTANCE TARIFFS.

A distance tariff is made up of a graduated scale of rates applying usually between points in an undeveloped or a local territory, which are based purely on distance.

¹¹² Ninth Annual Report of I. C. C. (1895).

¹¹³ See note 110, *supra*.

¹¹⁴ *Ibid*.

¹¹⁵ Rule 29, Tariff Circular 17-A.

¹¹⁶ *Ibid*.

¹¹⁷ In the Matter of Form and Contents of Rate Schedules, 4 I. C. R. 698; 6 I. C. C. R. 267.

§ 466. Tariffs must be printed.

The Act requires that all schedules of rates shall be plainly printed in large type.¹¹⁸

The Commission has ruled that all tariffs must be printed on hard calendered paper of good quality from type of size not less than 6-point full face. Stereotype, planograph, or other printing-press process may be used. Alterations in writing or erasures must not be made in tariffs before filing.¹¹⁹

Reproductions by hectograph or similar process, typewritten sheets, or proof sheets must not be used for posting or filing.¹²⁰

§ 467. Form and Size of Freight Tariffs.

All tariffs must be in book, sheet, or pamphlet form, and of size 8 x 11 inches. Loose-leaf plan may be used, so that changes can be made by reprinting and inserting a single leaf.¹²¹

§ 468. Information to be shown on Title-Page of every Freight Tariff.

The Commission has ruled that the title-page of every freight tariff shall show the following information:

¶ A. NAME OF CARRIER.

The name of issuing carrier, carriers, or agent.¹²²

¶ B. I. C. C. NUMBER AND CANCELLATIONS.

I. C. C. number of tariff in bold type on upper right-hand corner, and immediately thereunder, in smaller type, the I. C. C. number or numbers of tariffs canceled thereby. If the numbers of canceled tariffs are so large as to render it impracticable to thus enter them on the title-page, they must be shown immediately following the table of contents, and specific reference to such list must be entered on the title-page immediately under the I. C. C. number of the tariff. Serial numbers of carriers

¹¹⁸ See note 1, supra.

¹¹⁹ Rule 1, Tariff Circular 17-A.

¹²⁰ Ibid.

¹²¹ Rule 2, Tariff Circular 17-A.

¹²² Rule 3, Tariff Circular 17-A.

may, if desired, be entered below the upper marginal line of the title-page. Separate serial I. C. C. numbers will be used for freight and passenger tariffs.¹²³

¶ C. KIND OF TARIFF.

Whether tariff is local, joint, proportional, or a combination of the same; and whether class, commodity, or a combination of both.¹²⁴

¶ D. TERRITORY.

The territory or points from and to which the tariff applies, briefly stated.¹²⁵

¶ E. REFERENCE TO GOVERNING CLASSIFICATION AND EXCEPTION SHEETS.

Reference by name and I. C. C. number to the classification and exception sheets governing the tariff. Following form will be used:

“Governed, except as otherwise provided herein, by the Classification, ..., I. C. C. No. supplements thereto and reissues thereof; and by exceptions to said classification I. C. C. No. supplements thereto and reissues thereof.”

A tariff is not governed by a classification or exceptions thereto except when and to the extent stated on the tariff.¹²⁶

¶ F. DATES.

Date of issue and date effective. Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice.¹²⁷

¶ G. EXPIRATION NOTICE.

A provision in a tariff that the same, or any part thereof, will expire upon a given date, is not a guaranty that the tariff, or such part of it, will remain effective until that date. The

¹²³ Rule 3, Tariff Circular 17-A.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Rule 3, Tariff Circular 17-A.

¹²⁷ Ibid.

Commission considers such expiration notices undesirable, as many complications have arisen through their being overlooked. Such provision, if used, must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way. On such tariffs the term "Expires, unless sooner canceled, changed, or extended," must be used.¹²⁸

¶ H. STATUTORY NOTICE OR AUTHORITY FOR SHORTER NOTICE
MUST BE SHOWN.

The Act to Regulate Commerce requires that all changes in rates, or in rules that affect rates, shall be filed with the Commission at least thirty days before the date upon which they are to become effective. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not the statutory notice has been given. The title page of every tariff or supplement must show full thirty days' notice, except as otherwise provided.¹²⁹

On every tariff or supplement that is issued on less than thirty days' notice by permission or order or regulation of the Commission, notation that it is issued under special permission or order of the Interstate Commerce Commission, "No. . . ., of [date], or by authority of Rule, Tariff Circular [give current number], or by authority of decision of the Commission in case No." ¹³⁰

¶ I. NOTICE OF SUPPLEMENTS.

On the upper left-hand corner of the tariffs of less than 5 pages and on tariffs issued in loose-leaf form, the words: "No supplement to this tariff will be issued except for the purpose of canceling the tariff." On tariffs containing 5 and not more than 16 pages, inclusive: "Only one supplement to this tariff will be in effect at any time." On tariffs containing 17 and not more than 111 pages, inclusive: "Only two supplements to this tariff will be in effect at any time." On

¹²⁸ Rule 3, Tariff Circular 17-A.

¹²⁹ See note 13, *supra*.

¹³⁰ See note 122, *supra*.

tariffs containing over 111 pages: "Only three supplements to this tariff will be in effect at any time."¹³¹

¶ J. OFFICER ISSUING TARIFF.

Name, title, and address of the officer by whom the tariff is issued.¹³²

§ 469. Information that Freight Tariffs shall contain.

The Commission has ruled that freight tariffs in book or pamphlet form shall contain the following information, and in the order named:

¶ A. TABLE OF CONTENTS.

A full and complete statement in alphabetical order, of the exact location where information under general headings, by subject, will be found, specifying page or item numbers. If a tariff contains so small a volume of matter that its title page or its interior arrangement plainly discloses its contents, the table of contents may be omitted.¹³³

¶ B. PARTICIPATING CARRIERS.

Names of issuing carriers, including those for which joint agent issues under power of attorney, and names of carriers participating under concurrence, both alphabetically arranged. If there be not more than ten participating carriers their names may be shown on the title page of the tariff. The form and number of power of attorney or concurrence by which each carrier is made party to the tariff must be shown.¹³⁴

¶ C. INDEX OF COMMODITIES.

Alphabetically arranged and complete index of all commodities upon which commodity rates are named, preceded by a paragraph, viz.: "Following list enumerates only such articles as are given specific rates; articles not specified will take class rates." All of the items relating to different kinds or species of the same commodity will be grouped together.

¹³¹ See note 122, supra.

¹³² Ibid.

¹³³ Rule 4, Tariff Circular 17-A.

¹³⁴ Rule 4, Tariff Circular 17-A.

For example, all items of coal under "Coal," and descriptive word or words following, as "Coal," "Coal—Anthracite," "Coal—Bituminous," etc.¹³⁵

¶ D. INDEX TO GENERAL COMMODITY TARIFF.

The index to a general commodity tariff shall also include in alphabetical order all articles upon which commodity rates are named in other tariffs applying from any point of origin to any point of destination named in the tariff, and with such entry shall be shown the number or numbers of tariffs in which such rates are found. For example, "Lime, I. C. C. No. 122," or "Staves, I. C. C. No. 1042." Carriers' tariff numbers may be also shown.¹³⁶

¶ E. COMMODITY ITEM CONTAINING LIST OF ARTICLES TAKING ONE RATE NEED BE INDEXED BUT ONCE, PROVIDED REFERENCE IS GIVEN TO LIST OF ARTICLES EMBRACED.

A commodity item which refers to a list of articles taking one commodity rate need be indexed but once, provided reference is given to the item or the I. C. C. number of the issue that contains list of the articles embraced in the term. For example, "Agricultural implements, as described in item of this tariff," or "as described in Western Classification, I. C. C. No.;" or "Packinghouse products, as described in Tariff, I. C. C. No." When such specific reference to list of articles embraced in the term is given, the several articles so embraced need not be indexed separately.¹³⁷

¶ F. TARIFF MUST CONTAIN ALL RATES ON COMMODITIES INCLUDED IN TARIFF AND BETWEEN SAME POINTS.

A local tariff on a single commodity, or a few commodities, shall contain all of that carrier's commodity rates on such commodity or commodities applying from any point of origin to any point of destination named in the tariff; and a joint commodity tariff shall contain all of the initial carrier's com-

¹³⁵ Rule 4, Tariff Circular 17-A.

¹³⁶ Ibid.

¹³⁷ Rule 4, Tariff Circular 17-A.

modity rates on the same commodity or commodities applying from any point of origin to any point of destination named in the tariff via the route or routes authorized by the tariff. If there be not more than ten such commodities they may be named on the title page of the tariff.¹³⁸

¶ G. ALPHABETICAL ARRANGEMENT OF COMMODITY RATES TO EACH DESTINATION.

If all of the commodity rates to each destination in the tariff are arranged alphabetically by commodities, and plain reference thereto is given in table of contents, further or other index of commodities may be omitted from that tariff, provided that, if the issuing carrier, or a participating carrier, has in other tariff or tariffs commodity rates applying from any point of origin to any point of destination named in the tariff, a complete list in alphabetical order by commodities of such other tariffs, together with description of character of traffic, territory or points of origin and of destination, and the I. C. C. numbers of tariffs containing such commodity rates shall be shown in the first part of the tariff and shall be specifically referred to in the table of contents.¹³⁹

¶ H. COMMODITY RATE NOT INDEXED IS NOT A LAWFUL RATE.

Excepting such as appear in a tariff or a supplement to a tariff which does not require an index, a commodity rate that is not included in the index will be treated as not having been published and cannot lawfully be used.

¶ I. INDEX OF STATIONS.

An alphabetical index of points from which rates apply, and an alphabetical index of points to which rates apply, together with names of States in which located. When practicable, the index numbers of points and pages upon which rates will be found, or item numbers in which rates from or to such points appear, should be shown. If there be not more than 12 points of origin or 12 points of destination, the

¹³⁸ Rule 4, Tariff Circular 17-A.

¹³⁹ Rule 4, Tariff Circular 17-A.

name of each may, if practicable, be specified on title page of tariff.¹⁴⁰

If a tariff is arranged by groups of origin or destination, by bases, or by bases numbers, the indices must show for each point the proper group, basis, or basis number.

¶ J. ALPHABETICAL ARRANGEMENT OF POINTS IN RATE TABLES.

If points of origin or of destination are shown throughout the rate tables in continuous alphabetical order or are shown alphabetically by States and such States are alphabetically arranged, or are shown by groups alphabetically arranged, no index of points of origin or destination will be required. But when such alphabetical arrangement in rate tables is used the table of contents shall indicate the pages upon which points are so shown, and when arranged by States or groups shall give specific reference to the pages on which rates to or from points in each State or group will be found.¹⁴¹

If a tariff constructed so as to state rates by groups or bases, and also states specific rates to or from individual points, it shall contain an alphabetical index of such individual points and also alphabetical lists of the points in such groups, or reference to the I. C. C. number of issue which contains lists of such group points.

¶ K. GEOGRAPHICAL DESCRIPTION.

Geographical description of application of tariff may be used only when the tariff applies to or from all points in one or more States or Territories or when it applies to or from all points in a State or Territory except those specified. But such list of exceptions for a single State or Territory may not exceed one-third of the number of points in that State or Territory to or from which (*as the case may be*) the tariff will apply. For example, a tariff may state that it applies from all points in New York, Pennsylvania, and New Jersey, and from all points in Delaware, except (*here give alphabetical*

¹⁴⁰ Rule 4, Tariff Circular 17-A.

¹⁴¹ *Ibid.*

list of excepted points), and from the following points in Ohio (*here give alphabetical list of Ohio points*).¹⁴²

¶ L. TERRITORIAL OR GROUP DESCRIPTIONS.

Traffic territorial or group description may be used to designate points to or from which rates named in the tariff apply, provided a complete list of such points arranged by traffic territories or groups is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list. In this list the points in each traffic territorial or group description shall be arranged alphabetically, and the name or names of roads upon which points are located must be shown; or all of the points in traffic territories or groups named in the tariff may be included in one alphabetical index, provided (1) that points of origin and points of destination are shown separately, alphabetically; (2) that the name or names of roads upon which points are located and the traffic territorial or group description in which they belong are shown opposite the several points.¹⁴³

¶ M. REFERENCE MARKS AND ABBREVIATIONS.

Explanation of reference marks and technical abbreviations used in the tariff, except that a special rule or provision applying to a particular rate will be shown in connection with and on same page with such rate.¹⁴⁴

¶ N. LIST OF EXCEPTIONS.

List of exceptions, if any, to the classification governing the tariff which are not contained in exception sheets referred to on title page.¹⁴⁵

¶ O. EXPLANATORY STATEMENTS.

Such explanatory statements in clear and explicit terms regarding the rates and rules contained in the tariff as may

¹⁴² Rule 4, Tariff Circular 17-A.

¹⁴³ Ibid.

¹⁴⁴ Rule 4, Tariff Circular 17-A.

¹⁴⁵ Ibid.

be necessary to remove all doubt as to their proper application.¹⁴⁶

¶ P. RULES GOVERNING THE TARIFF.

Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the rates named in the tariff shall be entered, except that a special rate applying to a particular rate shall be shown in connection with and on the same page with such rate.¹⁴⁷

¶ Q. NO RULE SHALL AUTHORIZE SUBSTITUTING RATE FOUND IN ANY OTHER TARIFF.

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any rate named in the tariff a rate found in any other tariff or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part.¹⁴⁸

¶ R. RULE FOR EXPLOSIVES.

Tariffs which contain rates for the transportation of explosives must also contain notice that such rates are applicable in connection and in compliance with the regulations governing the transportation of explosives fixed by the Interstate Commerce Commission. If tariff is governed by classification it will be sufficient to include this notice in the classification referred to as governing the tariff.¹⁴⁹

¶ S. TARIFF RULES AND REGULATIONS FILED AND POSTED MAY BE REFERRED TO IN OTHER SCHEDULES GOVERNED THEREBY.

A carrier or an agent may publish, under I. C. C. number, post, and file a tariff publication containing the rules and regulations which are to govern certain rate schedules, and such

¹⁴⁶ Rule 4, Tariff Circular 17-A.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Rule 4, Tariff Circular 17-A.

publication may be made a part of such rate schedules by the specific reference, "Governed by rules and regulations shown in I. C. C., No. . . ."

When a tariff makes reference to another tariff the I. C. C. number of such other tariff must be given, and when such tariff referred to is the publication of another carrier or an agent, the initials of such other carrier or the name of such agent, respectively, must be shown in connection with the I. C. C. number.¹⁵⁰

A rate schedule may in like manner refer to another schedule for the governing rules and regulations.¹⁵¹

A schedule or a publication so referred to must be on file with the Commission and be posted at every place where a schedule that refers to it is posted.¹⁵²

¶ T. RATE TABLES.

An explicit statement of the rates, in cents or in dollars and cents, per 100 pounds, per barrel or other package, per ton or per car, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Minimum carload weights must be specifically stated. Tariffs containing rates per ton must specify what constitutes a ton thereunder. A ton of 2,000 pounds must be specified as "net ton" or "ton of 2,000 pounds." A ton of 2,240 pounds must be specified a "gross ton," "long ton," or "a ton of 2,240 pounds." Complicated or ambiguous plans or terms must be avoided.¹⁵³

¶ U. ROUTES.

The different routes via which tariff applies may be shown, together with appropriate reference to application of rates. When a tariff specifies routing the rates may not be applied via routes not specified. A tariff may show the routing ordinarily and customarily to be used and may provide that, if

¹⁵⁰ Rule 4, Tariff Circular 17-A.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

from any cause shipments are sent via other junction points but over the lines of carriers parties to the tariff, the rates will apply.¹⁵⁴

A carrier is required by law to publish the rate and also to clearly indicate the route over which the published rate is applicable. When so published the rate named and the route designated stand as the law binding as well upon the shipper as upon the carrier.¹⁵⁵

§ 470. A Tariff is not governed by a Classification except when so Specified.

A tariff naming commodity rates on strawberries in carloads fixed a certain rate on a minimum of 100 crates and a lower rate on a minimum of 200 crates. The classification in that territory provided that carload rates would apply only when the carload is shipped from one station in one day by one shipper to one consignee and destination. The shipments in question belonged to different owners, but with the knowledge and consent of the carrier, and under the admitted intent of the tariff, were loaded and forwarded as carload shipments: *Held*, That they were entitled to the application of the lower rate on the basis of the 200-crate minimum.¹⁵⁶

§ 471. Commodity Rates shown in Tariffs must be Specific.

Commodity rates shown in tariffs must be specific and must not be applied to analogous articles.¹⁵⁷

§ 472. Alternative Use of Class or Commodity Rates.

¶ A. ALTERNATIVE RATES IN SECTIONAL TARIFF.

If the alternative use of class or commodity rates is necessary or desired in any instance it may be provided by including in different sections of one and the same tariff such class and commodity rates, and by including in each section the

¹⁵⁴ Rule 4, Tariff Circular 17-A.

¹⁵⁵ See note 31, *supra*.

¹⁵⁶ Rule 141, Con. Rul. Bul. No. 4 (Feb. 2, 1909).

¹⁵⁷ See note 106, *supra*.

specific rule: "If the rates in Section ... of this tariff make a lower charge on any shipment than the rates in Section ... of this tariff, the rates in Section ... will be applied."¹⁵⁸

¶ B. CARRIERS MAY NOT REPRODUCE OTHER CARRIER'S OR AGENCY'S RATES FOR ALTERNATIVE USE.

No rates may be so included in a tariff for alternative use excepting such as the carrier or agent who issues the tariff is lawfully authorized to publish and change; that is, rates issued by another carrier or agency may not be reproduced by such alternative use.¹⁵⁹

¶ C. RULE FOR TARIFF WHICH DOES NOT PROVIDE FOR ALTERNATIVE USE OF RATES.

Each tariff that contains class rates and that is not constructed in sections for alternative use of rates, as provided in *Paragraph A, supra*, of this section, and that is issued or supplemented shall also contain a rule as follows:

Whenever a carload (or a less-than-carload) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in carload quantities (or less-than-carload quantities, as the case may be).¹⁶⁰

¶ D. RULE FOR TARIFF WHICH DOES PROVIDE FOR ALTERNATIVE USE OF RATES.

Each tariff that contains class and commodity rates and that is constructed in sections for alternative use of rates as provided in *Paragraph A, supra*, of this section, and that is issued or supplemented, shall contain a rule as follows:

Whenever a carload (or less-than-carload) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in carload quantities (or less-than-carload quantities, as the case may be), except when and in so far as alternative use of class and commodity rates are contained in separate sections of this tariff is specifically authorized herein.¹⁶¹

¹⁵⁸ Rule 7, Tariff Circular 17-A.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Rule 7, Tariff Circular 17-A.

¶ E. RULE IN CLASSIFICATION.

Each classification that is issued or supplemented shall contain a rule as follows:

Whenever a carload (or less-than-carload) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in carload quantities (or less-than-carload quantities, as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule, "If the rates in Section of this tariff make a lower charge on any shipment than the rates in Section of this tariff the rates in Section will be applied."¹⁶²

§ 473. Amendments and Supplements to Tariffs.

¶ A. AMENDMENT AND SUPPLEMENT DEFINED AND FORM THEREOF.

A change in or addition to a tariff shall be known as an amendment, and, excepting amendments to tariffs of less than five pages, and amendments to tariffs issued in loose-leaf form, shall be printed in a supplement to the tariff and shall refer to the page or pages or item or items of the tariff, or of previous supplement, which it amends.¹⁶³

An amended item must always be printed in a supplement in its entirety as amended, and the items in each supplement shall be arranged in the same general order as the tariff which it amends.¹⁶⁴

¶ B. PARTICIPATING CARRIERS.

A supplement shall contain either a list of carriers participating therein, or shall state that the list of participating carriers is "as shown in tariff," or "as shown in tariff, except" [*here show alphabetically all additions to and eliminations from the original list that are effected by the supplement, or that have been effected by previous supplements*].¹⁶⁵

¹⁶² Rule 7, Tariff Circular 17-A.

¹⁶³ Rule 9, Tariff Circular 17-A.

¹⁶⁴ Ibid.

¹⁶⁵ Rule 9, Tariff Circular 17-A.

¶ C. SUPPLEMENT NUMBER AND CANCELLATIONS.

Supplements to a tariff shall be numbered consecutively as supplements to that tariff and must not be given separate or new I. C. C. numbers. Each supplement shall specify the supplement or supplements which it cancels, and shall also show on its title-page what supplements are in effect and that such effective supplements contain all changes. For example: "Supplement No. ... to I. C. C. No. ..." "Cancels Supplements Nos. ... and ..." "Supplements Nos. ... and ... are in effect and contain all changes." The term "Cancels conflicting portions" must not be used.¹⁶⁶

¶ D. SHOW EFFECTIVE DATE OF REISSUED ITEMS AND I. C. C. REFERENCE.

A tariff which contains reissued items brought forward from a previous issue which has not been in effect thirty days, or a supplement which brings forward reissued items without change from a former supplement or tariff, must not bear notation, "Effective at once, except as noted," but instead must bear the notation, "Effective, except as noted in individual items." Example: "Issued, 19..., Effective, 19..., except as noted in individual items." Reissued items brought forward without change must show in conspicuous form and convenient manner the following: "Reissue [*in black-face type*]; effective [*date upon which item became effective*] in I. C. C. No.," or "in Supplement No. to I. C. C. No." When the reissued item became effective in a former supplement to the same tariff the I. C. C. number of the tariff may be omitted, but the supplement number must be given.

Items reissued from publications that were on file prior to May 1, 1907, may show last date and reference prior to May 1, 1907.¹⁶⁷

¶ E. NUMBER OF SUPPLEMENTS IN EFFECT AT ONE TIME.

A tariff of less than five pages may have no supplement;

¹⁶⁶ Rule 9, Tariff Circular 17-A.

¹⁶⁷ Rule 9, Tariff Circular 17-A.

change therein may be made only by reissue. Not more than one supplement may be in effect at any time to a tariff containing five and not more than 16 pages. Not more than two supplements may be in effect at any time to a tariff containing 17 and not more than 111 pages. Not more than three supplements may be in effect at any time to a tariff containing more than 111 pages, and such third supplement may be issued only when the smaller of the two effective supplements to that tariff contains not less than 10 per centum of the number of pages in the tariff.¹⁶⁸

¶ F. AMOUNT OF MATTER SUPPLEMENT MAY CONTAIN.

Tariffs containing five or more pages, including title-pages and indices, may be supplemented to the following extent:

Number of pages in tariff.	Supplement may contain (including title-page and index).
5 and not more than 16 pages.....	4 pages.
17 and not more than 32 pages.....	6 pages.
33 or more pages.....	25 per centum of the number of pages in tariff.

¶ G. SUPPLEMENT EXCEEDING LIMIT SUBJECT TO REJECTION.

A supplement to a tariff which has the effect of exceeding the number of pages of supplemental matter to that tariff as indicated in the preceding paragraph which may be in effect at any time will be subject to rejection when offered for filing.¹⁶⁹

¶ H. AMENDMENTS TO LOOSE-LEAF TARIFFS: NO SUPPLEMENTS.

All changes in and additions to tariffs issued in loose-leaf form must be made by reprinting both pages of the leaf upon which change is made. Such pages must not be given supplement numbers, but must be designated "First revised page . . .," "Second revised page . . .," etc., must show the I. C. C.

¹⁶⁸ Rule 9, Tariff Circular 17-A.

¹⁶⁹ Ibid.

number of the tariff, the issued and effective dates, and the name, title, and address of officer by whom issued. Changes or additions must be noted by proper reference marks. When no change or addition is made in one of the pages reprinted it must bear notation, "No change in this page."¹⁷⁰

¶ I. SUPPLEMENTS TO PERIODICAL TARIFFS.

If a tariff provides that it will be reissued periodically at specified times, not more than six months apart, and the life of the tariff does not exceed six months, and such provision is strictly observed, supplements to such tariff may contain all amendments thereto between such specified dates for reissue, without limit as to size. Such tariff must bear on upper left-hand corner of title-page notation, "This tariff will be reissued effective on or before, 19..."¹⁷¹

¶ J. INDEX TO SUPPLEMENT.

A supplement of five or more pages must have an index of the matter which it contains, and a supplement of more than 23 pages must also contain a table of contents.¹⁷²

¶ K. SUPPLEMENT TO TARIFF THAT IS FILED AND NOT YET EFFECTIVE.

If a tariff is filed on statutory notice canceling another tariff, and after such filing and prior to the effective date of such new tariff a supplement to the tariff to be so canceled should be lawfully issued, rates in that supplement could not continue in effect for the thirty days required by the law, because the cancellation of the tariff also cancels supplements to it. In such a case supplements containing changes not included in the tariff that is to become effective may be issued as supplements both to the tariff in effect and to the tariff on file that will effect such cancellation, and be given both I. C. C. numbers. In other words, such issue must be a supplement to each of the tariffs, and copies must be filed accordingly. A supple-

¹⁷⁰ Rule 9, Tariff Circular 17-A.

¹⁷¹ Ibid.

¹⁷² Ibid.

ment issued under this rule containing reissued items shall note in connection with each of such items, in addition to the date effective as required by the rule, that the reissued items expire on the date at which the new tariff becomes effective, and that the new tariff will apply in lieu thereof; and such reissued items must not be brought forward in subsequent supplements to the new tariff. Such supplements may not contain any changes except those lawfully made by supplement to the tariff which is to be canceled by the tariff that has been filed and that is also so supplemented; and no other kind of supplement to a tariff that is on file and not yet effective may be made effective within thirty days from the effective date of the tariff without special permission.

The provisions of *Paragraph E, supra*, this section, as to the number of supplements to a tariff that may be in effect at any time, and the volume of supplemental matter they may contain, must be observed in connection with supplement issued under this paragraph.¹⁷³

¶ L. WITHDRAWAL AND ADOPTION OF TARIFFS WHEN ONE CARRIER IS ABSORBED BY ANOTHER CARRIER.

In case of change of ownership or control of a carrier, the carrier whose line is absorbed, taken over, or purchased by another carrier shall unite with that other carrier in common supplements to the tariffs on file with the Commission, on the one hand withdrawing and on the other hand accepting and establishing such tariffs and all effective supplements thereto. Such common supplements shall be executed jointly by the traffic officers of both the old and the new carriers, shall be numbered consecutively as supplements to the tariffs (*even if of less than five pages*) to which they are directed, and may be made effective on five days' notice to the public and the Commission by noting thereon reference to this rule. Amendments to such tariffs must thereafter be filed in consecutively numbered supplements thereto until the tariffs are reissued. New

¹⁷³ Rule 9, Tariff Circular 17-A.

tariffs reissuing or superseding these shall be numbered in the I. C. C. series of the new carrier.¹⁷⁴

¶ M. WITHDRAWAL AND ADOPTION OF TARIFFS WHEN A ROAD OR PORTION THEREOF IS TRANSFERRED TO ANOTHER COMPANY, OR ITS NAME IS CHANGED.

When a road or a part of a road is transferred from the operating control of one company to that of another, or when its name is changed, the existing tariffs issued by the company that surrenders control must be withdrawn by it and adopted by the company assuming control, as provided in the preceding paragraph.¹⁷⁵

¶ N. ADOPTION OF TARIFFS ISSUED BY OTHER CARRIERS OR JOINT AGENTS, AND OF CONCURRENCES, POWER OF ATTORNEY, ETC., FILED BY OLD CARRIER.

As to tariffs issued by other carriers or joint agents under concurrences or powers of attorney granted by the old carrier or company, the new carrier or company shall, if it intends to use such tariff publications and rates, issue, file, and post, with I. C. C. numbers, an adoption notice, substantially as follows:¹⁷⁶

The [*name of carrier*] hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatever, filed with the Interstate Commerce Commission by the [*name of old carrier*] prior to [*date*] the beginning of its possession. By this tariff it also adopts and ratifies all supplements or amendments to any of the above tariffs, etc., which it has heretofore filed with said Commission.

This notice may be made effective and be filed on immediate notice.¹⁷⁷

¶ O. ADOPTION NOTICE FILED BY RECEIVER.

Similar adoption notice as shown in the preceding paragraph must be filed by a receiver when assuming possession and control of a carrier's lines.¹⁷⁸

¹⁷⁴ Rule 9, Tariff Circular 17-A.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Rule 9, Tariff Circular 17-A.

¶ P. CONCURRENCES AND POWERS OF ATTORNEY OF OLD CARRIER MUST BE REPLACED BY THOSE OF NEW CARRIER.

Concurrences and powers of attorney adopted as above by a carrier must, as soon as possible, be replaced and superseded by new concurrences and powers of attorney issued by and in the name of the new carrier or company, and in each instance canceling the concurrence or power of attorney superseded. The carrier surrendering control of the property has no lawful right to abandon its tariffs except on lawful notice, and when it surrenders control of the property it surrenders all right to publish rates or fares applicable thereto except under proper authority from the carrier or company to whose control the property passes. The public has a right to available and lawfully applicable rates and fares over that property.¹⁷⁹

§ 474. **Effective Dates of Tariffs, Classifications, and Exception Sheets and Supplements thereto.**

¶ A. A TARIFF THAT FAILS TO STATE THE DATE OF ITS EFFECTIVENESS IS UNLAWFUL.

The Act to Regulate Commerce (*as amended June 18, 1910*) gives the Commission authority to reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and provides that any schedule so rejected by the Commission shall be void and its use shall be unlawful.^{180a}

A tariff was filed without naming a date on which it was to take effect. Does it ever become effective, and if so, when? *Held*, That the tariff was unlawful and has never taken effect.¹⁸⁰

¶ B. EFFECTIVE DATE OF TARIFF THAT WAS USED BEFORE AUGUST 28, 1906, BUT WAS NOT FILED UNTIL AFTER THAT DATE.

Prior to the effective date of the amended Act some carriers used the car-service rules of car-service associations under which to assess demurrage and other terminal charges, but did not file those rules with the Commission until after the amended

¹⁷⁹ Rule 9, Tariff Circular 17-A.

¹⁸⁰ Rule 12, Con. Rul. Bul. No. 4 (Dec. 2, 1907).

^{180a} Section 6, Act (as amended June 18, 1910).

Act became effective. Such publications bore effective dates antedating their filing, but indicated no specific date subsequent to the date of filing upon which the schedule should become effective. The question raised as to whether such publications so filed became effective on the date of filing or thirty days subsequent thereto: *Held*, That prior to August 28, 1906, as well as subsequent to that date, the law required carriers amenable to its provisions to file with the Commission and post to the public schedules containing their terminal charges "and any rules or regulations which in any wise change, affect, or determine any part or the aggregate" of their rates, fares, and charges. The amended Act prohibits carriers from engaging or participating in the transportation of passengers or property, as defined by the Act, unless the rates, fares, and charges upon which the same are transported have been filed and published in accordance with the provisions of the Act.

The Commission has decided that, excepting the first tariff under which a carrier engages in interstate transportation, a tariff that is filed without naming date on which it is to take effect is unlawful and never becomes effective; it decided under the above consideration that publications that were used prior to the effective date of the amended Act, that were filed subsequent to that date and which bore effective dates antedating the date of filing thereof, became effective thirty days subsequent to the date of the filing of the same.¹⁸¹

¶ C. TARIFFS TAKING EFFECT ON SUNDAY.

Under a tariff schedule regularly filed, showing a change in published rates, it happened that the thirty days' notice required by law expired on Sunday. *Held*, That the tariff is lawful.¹⁸²

¶ D. EFFECTIVE DATE OF TARIFF WHICH BORE NO EFFECTIVE DATE WHICH WAS FILED BY A CARRIER WHEN FIRST COMING UNDER THE LAW.

A carrier, under its arrangement for the first time to participate in interstate transportation, failed to note an effective

¹⁸¹ Rule 100, Con. Rul. Bul. No. 4 (Oct. 12, 1908).

¹⁸² Rule 47, Con. Rul. Bul. No. 4 (March 9, 1908).

date on its tariff schedule. *Held*, That being that carrier's first tariff subject to the Act, it became effective as soon as filed.¹⁸³

§ 475. Cancellation of Tariffs or Parts thereof.

¶ A. GENERAL PRINCIPLES.

A rate once lawfully published continues to be the lawful rate until it has been lawfully canceled. A subsequent tariff naming other rates without canceling the previous rates cannot carry the new rates into lawful effect. The silence of a subsequent tariff with respect to rates lawfully in effect cannot be accepted as a lawful cancellation of the previous rates. Nor will vague reference in subsequent tariffs as to the cancellation of previous tariffs have that effect. The law and the requirements of the Commission as set forth in the following paragraphs provide a method by which existing rates may be canceled and other rates may be put in effect and these requirements must be fulfilled in order to give legal effect to a new rate intended to take the place of an existing rate.¹⁸⁴

¶ B. TARIFF OR SUPPLEMENTS TO TARIFF SHALL SPECIFY CANCELLATIONS.

If a tariff or supplement to a tariff is issued which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state the portion of such other tariff which is thereby canceled, and such other tariff shall at the same time be correspondingly amended, effective on the same date, in the regular way; that is, by reissue, if tariff is of less than five pages, and by reissue or supplement, if tariff is of more than five pages. Such reissue or supplement must state where rates will thereafter be found and must be filed at the same time and in connection with the tariff which contains the new rates. It will not be necessary to give on commodity tariff or supplement reference to first-class tariffs that may be af-

¹⁸³ Rule 73, Con. Rul. Bul. No. 4 (May 5, 1908).

¹⁸⁴ *New Albany Box & Basket Co. v. Illinois Cent. Rd. Co.*, 16 I. C. C. R. 315.

fect, nor to give on first-class tariffs or supplements reference to commodity tariffs, except as otherwise provided in specific rules.¹⁸⁵

¶ C. CANCELLATION MUST BE BY AUTHORIZED AGENT OR BY CARRIER THAT ISSUED THE TARIFF CANCELED.

An agent who acts under power of attorney is fully authorized to act for the carriers that have named him their agent and attorney, and, therefore, it is permissible for him to cancel by his tariffs issues of such principals.

A carrier may not by its individual tariff cancel, amend, or modify a tariff filed by a duly authorized agent, except when corresponding amendment to such agent's tariff is filed at the same time and as per *Paragraph B, supra*, this section.¹⁸⁶

¶ D. CONCURRENCE DOES NOT CONFER AUTHORITY TO CANCEL.

A concurrence does not confer authority upon either carrier or agent to cancel tariffs of concurring carrier, and, therefore, tariffs issued under concurrences may not assume to cancel, or carry notation of cancellation of, tariffs of and issued by concurring carriers. Such cancellations must be made by the carrier that issued the tariff that is to be canceled.¹⁸⁷

¶ E. CANCELLATION NOTICE MUST BE BY SUPPLEMENT.

If a tariff is canceled with the purpose of canceling entirely the rates named therein, or when, through error or omission, a later issue failed to cancel the previous issue and a tariff is canceled for the purpose of perfecting the records, the cancellation notice must not be given a new I. C. C. number, but must be issued as a supplement to the tariff which it cancels, even though it be a tariff of four pages or less, and even though the tariff may at the time have the full number of supplements permitted by the section relating to Amendments and Supplements.¹⁸⁸

¹⁸⁵ Rule 8, Tariff Circular 17-A.

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

¶ F. CANCELLATION NOTICE SHALL SPECIFY WHERE RATES
WILL THEREAFTER BE FOUND.

When a commodity rate is canceled, the cancellation notice must show where the rates or rate will thereafter be found or what rates or rate will thereafter apply. For example: "Rate in, I. C. C. No., will apply," or "Class rates will apply," or "Combination rate will apply," or "No rates in effect."

If a tariff is canceled with the purpose of applying in lieu thereof the rates shown in some other tariff, the cancellation notice shall make specific reference to the I. C. C. number of the tariff in which such rates will thereafter be found. Cancellation of a tariff also cancels the supplement to such tariff, if any in effect.¹⁸⁹ If a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice in new tariff, as provided elsewhere.¹⁹⁰

¶ G. WHEN JOINT AGENT PUBLISHES A NEW RATE BETWEEN
TWO POINTS, WITHOUT CANCELING THE OLD RATE DULY
PUBLISHED BY ONE OF THE CARRIERS, THE OLD RATE
ON THAT LINE REMAINS IN EFFECT.

The published tariffs of an interstate carrier named a rate of 20 cents on a given commodity between specified points. On October 1, 1907, under a proper power of attorney, a joint agent of all carriers serving those two points published a rate of 22 cents. He failed to cancel the 20-cent rate and it was not formally canceled by the carrier that published it until January 14, 1908. *Held*, That because of the failure of the joint agent and of the carrier that published it to cancel the rate in the manner required by the Act and the rule of the Commission, the 20-cent rate remained the lawful rate of that carrier until formally canceled on January 14, 1908.¹⁹¹

A carrier's tariff effective January 1, 1903, named certain rates between two points. By a joint tariff, effective February

¹⁸⁹ Rule 8, Tariff Circular 17-A.

¹⁹⁰ *Ibid*.

¹⁹¹ Rule 50, Con. Rul. Bul. No. 4 (Jan. 14, 1908).

1, 1908, higher rates were named between the same points, but without reference to the previous tariffs or cancellation of the lower rates therein. On March 26, 1908, a supplement was filed naming the same higher rates and canceling the rates named in the tariff of January 1, 1903. *Held*, That until March 26, 1908, when the original rates were canceled, they remained in effect and were the lawful rates.¹⁹²

¶ H. CANCELLATION OF A TARIFF DOES NOT IMPAIR RIGHTS OF SHIPPER WHICH ACCRUED UNDER SUCH TARIFF PRIOR TO ITS CANCELLATION.

A schedule of rates extended by a carrier to the shipping public may be canceled upon thirty days' notice in conformity with the law. But such cancellation is not to be construed as a withdrawal of all rights arising under such tariff to those who have availed themselves of its provisions prior to the date that such tariff dies. If this were not so, a shipper could never know whether rights or privileges extended by carriers in their lawful tariffs would be available for the period fixed therein. It would be manifestly within a carrier's power to withdraw, by cancellation, at any time such rights as the tariffs offered at the time of shipment, thus leaving the shipper at the mercy of the carrier until the ultimate arrival of his freight at destination. This is a view of the law which would be utterly impracticable and vicious in its effects. The shipper must know at the time of tender of shipment from the tariffs themselves what rate he must pay and what rights thereunder he may secure. If there is offered to him under the tariff a right of stopping in transit, reconsignment, storage or return of freight, he is entitled to use such privilege, even though it may be later canceled out of the tariff before the time allowed for the exercise of such right has expired. The date of original shipment determines the rights, privileges, and obligations attaching to that shipment throughout its transportation; and this must be determined by the tariff in force upon that date.¹⁹³

¹⁹² Rule 70, Con. Rul. Bul. No. 4 (May 5, 1908).

¹⁹³ *Interstate Remedy Co. v. American Express Co.*, 16 I. C. C. R. 436.

§ 476. Joint Tariffs Issued by Joint Agents.

¶ A. RIGHT OF JOINT AGENT TO ISSUE JOINT TARIFFS AND FOR WHOM HE ACTS.

It will be permissible for an agent and attorney for certain lines to join with another agent and attorney for lines in another territory in the issuance of tariffs, naming joint through rates from points in one territory to points in the other, or "between" points in the territories represented by such agents. In doing this each of such agents acts for the lines that have given him power of attorney FX1¹⁹⁴ and for the lines that have given proper concurrences to the carriers that have given him such power of attorney; and for such lines only.¹⁹⁵

¶ B. I. C. C. NUMBERS AND FILING.

The publication issued as in the preceding paragraph will bear I. C. C. numbers, under the serial of each of the agents, and each of the agents will file the publication and each and every supplement thereto for and on behalf of the roads for which he is attorney and agent and those that are participants under concurrences to the roads for which he is agent and attorney, just as if it were his individual publication on behalf of those carriers alone. Each of such agents will be held to strict conformity to the law and the tariff regulations regarding the construction of the tariff and notices of changes therein, and in filing the tariff and each and every applicant thereto.¹⁹⁶

¶ C. EACH AGENT ACTS ONLY FOR CARRIERS FOR WHICH HE HAS AUTHORITY.

Under the above arrangement each agent acts only for the carriers that he has due authority to act for.¹⁹⁷

¹⁹⁴ FX1, FX2, etc., refer to the forms of concurrences and powers of attorney to be filed with the Commission as treated of at length in this chapter.

¹⁹⁵ Rule 17, Tariff Circular 17-A.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¶ D. PRINCIPALS OF EACH AGENT BOUND BY HIS ACTS, AND
CROSS EXCHANGE OF CONCURRENCES NOT REQUIRED.

The principals of each are bound by the acts of their attorney and agent, and as each will file the tariff under his own I. C. C. number and for the roads which he lawfully represents, the cross exchange of concurrences between all of the different roads represented on the one hand by one agent and on the other hand by the other agent will not be necessary as to that tariff.¹⁹⁸

¶ E. LISTS OF PARTICIPATING CARRIERS.

Such publication will show lists of participating carriers in the following manner: First, a list of the carriers from which one of the agents has power of attorney FX1, showing as to each the FX1 number of such authority. Second, a list of the carriers that participate under concurrences to the lines for which that agent is agent and attorney, showing the form and number of each concurrence. Third, a list of the carriers for which the other agent is agent and attorney, with the FX1 number of his authority as to each. Fourth, a list of the carriers that participate under concurrences to the lines for which that agent is agent and attorney, showing the form and number of each concurrence.¹⁹⁹

Each of these four subdivisions of the participating carriers will be indicated by plain headlines, as, for instance, "Lines for which is agent and attorney," "Participating lines under concurrences to carriers for which is agent and attorney," and like notices for the other agents' lists of principals and concurring lines.

In order to avoid confusion and complications under this plan, it is essential that the agents adopting it shall perfect their understandings and that there shall be no omission or neglect on part of either about filing under lawful notice any tariff so issued or any supplement thereto.²⁰⁰

¹⁹⁸ Rule 17, Tariff Circular 17-A.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

§ 477. Agents authorized to issue and file Tariffs, Classifications and Exception Sheets and Supplements thereto.

¶ A. NOTICE OF AUTHORIZATION AND ACCEPTANCE MUST BE FILED.

If a carrier authorizes an agent to file its tariffs or classifications and exception sheets and supplements thereto, or certain of them, official notice of such authorization and of acceptance of responsibility by the carrier for his acts, in form as hereinafter specified, must be filed with the Commission.²⁰¹

¶ B. FORM OF APPOINTMENT OF AGENT TO FILE TARIFFS, CLASSIFICATIONS, AND EXCEPTION SHEETS AND SUPPLEMENTS THERETO.

The following form, on page 8 by 10½ inches in size, will be used in giving authority to an agent to file for the carrier tariffs, classifications and exception sheets, and supplements thereto. Such authority must not be given to an association or bureau, and it may not contain authority to delegate to another power thereby conferred.²⁰²

This form may be modified so as to confer the authority desired by omitting the words “(1) for it alone,” or by omitting the words “and (2) for it jointly with other carriers.”²⁰³

In giving power of attorney to an agent for the purpose of issuing classification this form may be modified by striking out the word “tariffs,” and if desired the words “and exception sheets.”²⁰⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Freight Department,

[*Dated*] . . . , . . .

Form FX1—No. . . .

Know all men by these presents:

That the [*name of carrier*] has made, constituted, and appointed, and by these presents does make, constitute, and appoint [*name of person appointed*] its true and lawful attorney and agent for the said

²⁰¹ See note 11, *supra*.

²⁰² Rule 18, Tariff Circular 17-A.

²⁰³ *Ibid*.

²⁰⁴ Rule 16, Tariff Circular 17-A.

company and in its name, place, and stead, (1) for it alone, and (2) for it jointly with other carriers, to file tariffs, classifications, and exception sheets and supplements thereto, as required of common carriers by the Act to Regulate Commerce and by regulations established by the Interstate Commerce Commission thereunder for the period of time the traffic and the territory now herein named:

.....
 And the said [*name of carrier*] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its president and to be duly attested under its corporate seal by its secretary, at, in the State of, on this day of, in the year of our Lord nineteen hundred and

The [*name of carrier*],

By, ...

Its President.

Attest:

.....,

Secretary.

[*Corporate Seal.*]

*Original Form to be Filed with Commission and Duplicates
 Furnished Agent.*

Carrier using this form will file the original with the Commission and will furnish duplicate to the agent to whom power of attorney is given. Separate authorizations will be given for freight and passenger tariffs.

¶ C. CROSS EXCHANGE OF CONCURRENCES AVOIDED.

If two or more carriers execute the above form containing the words "for it jointly with other carriers" in favor of a joint agent it will not be necessary for those carriers to exchange concurrences *with each other* as to the joint tariffs issued by that joint agent under that authority.²⁰⁵

¶ D. AUTHORITY TO AGENT MAY BE REVOKED OR TRANSFERRED.

Authority given as above stated may be revoked by a carrier upon thirty days' official notice to the Commission, or at any time be transferred to another agent by filing with the

²⁰⁵ See note 202, supra.

Commission notice of such transfer, accompanied by full-form authorization for the newly named agent.²⁰⁶

¶ E. AUTHORIZATIONS FOR AGENT AND CONCURRENCES IN HIS
TARIFFS MUST BE FILED.

If two or more carriers appoint the same person as agent for the filing of tariffs or classifications and supplements thereto, each of them will be required to file with the Commission power of attorney in form prescribed appointing him their agent; and the concurrence of every other carrier participating in any tariff or classification or supplement thereto which is filed by him must be on file with the Commission or accompany the tariff.²⁰⁷

¶ F. JOINT AGENT WILL USE HIS OWN I. C. C. SERIAL NUMBER.

Such joint agent duly authorized to act for several carriers must file joint tariffs or classifications or exception sheets under I. C. C. serial numbers of his own.²⁰⁸

¶ G. TARIFFS ISSUED BY A CARRIER UNDER CONCURRENCES WILL
BE FILED BY IT FOR ALL CONCURRING.

Tariffs issued by a carrier under its I. C. C. numbers may include, under proper concurrences, shown therein, rates via, and to and from points on other carriers' lines and concurring carriers may use such tariffs for posting at their stations. Such tariff must be filed by the issuing carrier and such filing will constitute filing for all lawfully concurring carriers.²⁰⁹

¶ H. SEND COPIES OF JOINT PUBLICATION TO EVERY PARTICIPANT THEREIN.

The agent or the carrier that issues a joint tariff publication shall at once send copies thereof to each and every carrier that is named as party thereto.²¹⁰

²⁰⁶ See note 11, *supra*.

²⁰⁷ *Ibid*.

²⁰⁸ *Ibid*.

²⁰⁹ *Ibid*.

²¹⁰ *Ibid*.

¶ I. CARRIER MUST NOT PUBLISH RATES CONFLICTING WITH
OR DUPLICATING RATES PUBLISHED BY ITS AGENT.

A carrier that grants authority to an agent or to another carrier to publish and file certain of its rates must not in its own publications publish rates that duplicate or conflict with those which are published by such authorized agent or other carrier.²¹¹

¶ J. WHEN AGENT FILES CLASS, BUT NOT COMMODITY RATES.

If an agent publishes class rates and does not also publish commodity rates, such agent's class tariff must carry notation that the commodity rates of the carriers parties to the tariff are to be found in their individual issues, and that where so found they take precedence over class rates.²¹²

¶ K. WHEN AGENT PUBLISHES PART BUT NOT ALL COMMODITY
RATES.

If an agent publishes a part but not all of the commodity rates of the carriers for which he acts, all of his tariffs containing commodity rates must bear notation that commodity rates not shown therein are to be found in the carriers' individual issues, and where so found they take precedence over class rates.²¹³

¶ L. CARRIER MAY GRANT AUTHORITY TO JOINT AGENT TO
PUBLISH AND FILE ITS CLASSIFICATION, EXCEPTION
SHEETS AND SUPPLEMENTS THERETO.

A carrier may grant to a joint agent authority to publish and file for it classification and supplements thereto and exceptions to the classification; or, such exceptions may be published by the carrier in its own issues, either as parts of individual tariffs or in a publication that is given an I. C. C. number, that is filed and posted and required, and that is devoted to such exceptions. Such exceptions and changes there-

²¹¹ See note 11, *supra*.

²¹² *Ibid*.

²¹³ *Ibid*.

in may be made only on statutory notice or under special permission for a shorter time.²¹⁴

In so far as reasonably practicable exceptions should be included in the tariff which they affect.²¹⁵

¶ M. I. C. C. NUMBERS OF CLASSIFICATIONS ISSUED BY JOINT AGENT.

A joint agent to whom carriers have extended authority under power of attorney to publish and file classifications and supplements thereto must issue them under his own I. C. C. numbers.²¹⁶

¶ N. LIST OF PARTICIPATING CARRIERS.

A joint agent to whom carriers have extended authority under power of attorney to publish and file classifications and supplements thereto must show in the classification a list of the carriers under which he acts under power of attorney, giving as to each the FX1 number of such authority.²¹⁷

¶ O. FILING OF CLASSIFICATIONS ISSUED BY JOINT AGENT.

A joint agent issuing a classification for carriers under power of attorney as stated in *Paragraph A, supra*, must file the classification and supplements thereto on behalf of all the carriers that so authorized him to act for them; and such carriers will not file the classification or supplements thereto for themselves. The provisions of the law as to statutory notice must be observed in the issuance of supplements or reissue of the classification.²¹⁸

¶ P. IF CARRIER DOES NOT AUTHORIZE AGENT TO FILE CLASSIFICATION, CARRIER IS BOUND TO STATUTORY NOTICE.

If a carrier fails to authorize an agent to file the classification for it and undertakes to file it for itself, it is bound by the terms of the law as to notice of change and date of filing, both as to the classification and supplement thereto.²¹⁹

²¹⁴ See note 204, *supra*.

²¹⁵ *Ibid*.

²¹⁶ *Ibid*.

²¹⁷ *Ibid*.

²¹⁸ *Ibid*.

²¹⁹ *Ibid*.

§ 478. Concurrence by Carriers in Tariffs issued and filed by another Carrier or its Agent.

¶ A. MANDATE OF THE STATUTE REGARDING CONCURRENCE IN JOINT TARIFFS.

The Act provides that each of the parties to a joint tariff, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.²²⁰

¶ B. CONCURRENCE BETTER THAN POWER OF ATTORNEY.

The Commission has ruled that experience has demonstrated that it is simpler and better to use concurrence than power of attorney in giving authority to a carrier to publish and file another carrier's rates. Provision for giving power of attorney to another carrier, has, therefore, been eliminated except for the purpose of granting authority to give and receive concurrences as provided elsewhere.²²¹

¶ C. CONCURRENCE MUST BE GIVEN TO CARRIERS NAMED THEREIN.

Concurrences must be given to carriers named therein and authority so granted to a carrier may be by it delegated to its lawfully appointed agent.²²²

¶ D. SIZE OF PAPER.

All concurrences must be on paper 8 by 10½ inches in size.²²³

¶ E. SEPARATE CONCURRENCES FOR FREIGHT AND PASSENGER TARIFFS.

Separate concurrences will be given by carriers for freight and passenger tariffs.²²⁴

²²⁰ See note 1, supra.

²²¹ Note to Rule 18, Tariff Circular 17-A.

²²² See note 202, supra.

²²³ Ibid.

²²⁴ Ibid.

¶ F. FORM OF CONCURRENCE IN A TARIFF THAT IS ISSUED AND FILED BY ANOTHER CARRIER OR ITS AGENT AND TO WHICH THE CARRIER GIVING CONCURRENCE IS A PARTY.

The following form will be used in giving concurrence in a tariff that is issued and filed by another carrier or its agent and to which the carrier giving the concurrence is a part.²²⁵ If given to continue until revoked, it will serve as a continuing concurrence in the tariff described in the concurrence and all supplements to and reissues thereof. If provision for concurrence to continue until revoked is stricken out, a new concurrence will be required with each supplement or reissue.²²⁶

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Freight Department,

[Date], ...

Form FX2—No. ...

To the Interstate Commerce Commission,

Washington D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of the rate schedule described below, together with supplements thereto and reissues thereof which the named issuing carrier or its agent may make and file, and hereby makes itself a party thereto and bound thereby, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

Title and number: [Here give exact description of title of schedule, including number and name of series.]

Date of issue.....

Date effective.....

Issued by { [Official.]
[Company.]

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Concurrences Accompanying Tariff.

The original of this form will be filed with the Commission by the carrier or agent who files the tariff and will accompany the tariff.²²⁷

²²⁵ Rule 19, Tariff Circular 17-A.

²²⁶ Ibid.

²²⁷ Ibid.

¶ G. FORM OF CONCURRENCE GIVEN BY CARRIER TO EMBRACE ALL TARIFFS ISSUED BY ANOTHER CARRIER OR ITS AGENT IN WHICH CONCURRING CARRIER IS SHOWN AS A PARTICIPATING INTERMEDIATE OR TERMINAL LINE.

Concurrences may be given by any carrier to embrace all tariffs issued by another carrier or its agent in which the concurring carrier is shown as a participating intermediate line or terminal after the following form:²²⁸

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Freight Department,

[Date] , ...

Form FX3—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [name of carrier] or its agent may make and file, in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line and to, but not from, points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

*Original Form to be Filed with Commission and Duplicate
Furnished Carrier.*

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way except to show what agents have been given power of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.²²⁹

²²⁸ Rule 20, Tariff Circular 17-A.

²²⁹ Ibid.

¶ H. FORM OF CONCURRENCE GIVEN BY A CARRIER IN TARIFFS
ISSUED BY ANOTHER CARRIER OR ITS AGENT APPLYING
RATES TO OR FROM ITS POINTS OR VIA ITS LINES, ON
CERTAIN DESCRIBED TRAFFIC OR BETWEEN CERTAIN DE-
SCRIBED POINTS OR TERRITORIES.

Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying rates to or from its points or via its lines, on certain described traffic or between certain described points or territories, after the following form, modified as may be necessary to confer exactly the authority intended to be granted. For granting authority to publish and file rates to and from and via its lines, and not otherwise qualified, carrier will use concurrence form FX5 or FX7.

If a carrier has given another carrier concurrence FX4, under which it concurs in the classification which that other carrier or its agent may make and file the carrier to which that concurrence is given may exercise the authority by its lawfully appointed agents and the carrier which gave the authority be shown in the publication as participant under the form and number of its concurrence.²³⁰

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Freight Department,

[*Date*] . . . , . . .

Form FX4—No. . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [*name of carrier*] or its agent may make and file and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon . . . ; or between . . . and . . . ; or from . . . to . . . ; or via . . . ; until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

²³⁰ See note 204, supra.

*Original Form to be Filed with Commission and Duplicate
Furnished Carrier.*

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given.²³¹

¶ I. FORM OF CONCURRENCE BY A CARRIER IN TARIFFS ISSUED
BY ANOTHER CARRIER OR ITS AGENT APPLYING RATES TO
AND FROM ITS POINTS AND VIA ITS LINES.

Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying rates *to and from* its points and via its lines and after the following form:²³²

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Freight Department,

[Date], ...

Form FX5—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [name of carrier] or its agent may make and file, and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying to and from stations on its lines, and via its lines, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

*Original Form to be Filed with Commission and Duplicate
Furnished Carrier.*

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way, unless to show what agents have been given powers of attorney and to provide that tariffs shall not be issued under

²³¹ Rule 21, Tariff Circular 17-A.

²³² Rule 22, Tariff Circular 17-A.

the concurrence covering traffic provided for in tariffs issued by such agents.²³³

¶ J. FORM OF CONCURRENCE GIVEN BY TWO OR MORE CARRIERS
IN TARIFFS ISSUED BY THEIR JOINT AGENT.

If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements there-to under powers of attorney form FX1, concurrence in tariffs issued by him under such authority may be in either the following forms:²³⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Freight Department,

[*Date*] . . . , ...

Form FX6—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [*here give list of all roads for which the agent has powers of attorney*], or either or any of them may make and file through their agent and attorney [*name of agent*], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to but not from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

Filing.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.²³⁵

²³³ Rule 22, Tariff Circular 17-A.

²³⁴ Rules 23 and 24, Tariff Circular 17-A.

²³⁵ Ibid.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Freight Department,

[*Date*] . . . , . . .

Form FX7—No. . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [*here give list of all roads for which the agent has powers of attorney*], or either or any of them may make and file through their agent and attorney [*name of agent*], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to and from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

Filing.

Carrier issuing these forms will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.²³⁶

¶ K. FORM OF CONCURRENCE GIVEN BY TWO OR MORE CARRIERS IN TARIFFS ISSUED BY THEIR JOINT AGENT, APPLYING TO OR FROM CERTAIN POINTS OR TERRITORY.

If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form FX1, concurrence in tariffs issued by him under such authority applying to or from certain points or territory may be issued in the following form, modified as may be necessary to confer exactly the authority intended to be granted.²³⁷

²³⁶ Rules 23 and 24, Tariff Circular 17-A.

²³⁷ Rule 25, Tariff Circular 17-A.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Freight Department,

[*Date*] . . . , ...

Form FX8—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [*here give list of all roads for which the agent has powers of attorney*], or either or any of them, may make and file through their agent and attorney [*name of agent*], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon . . . ; or between . . . and . . . ; or from . . . to . . . ; or from . . . to points on or reached via its line; or from points on or via its line to . . . until this authority is revoked by formal and official notice of revocation placed in the hands of the Interstate Commerce Commission and of the carriers to which this concurrence is given, or of their agent and attorney herein named.

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

Filing.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicate to each and every carrier represented by him.²³⁸

NOTE.—Concurrence, form FX2, applies to individual publication named therein. Concurrence, form FX3 or FX6, confers authority to publish and file rates to, but not from, points on line of concurring carrier, and via its lines. Concurrence, form FX5 or FX7, confers authority to publish and file rates to and from points on line of concurring carrier, and via its lines. Forms FX3, FX5, FX6, and FX7 are not to be modified except as specified in the Rules. The use of these several forms as provided will, therefore, show by the form number just what authority has been given, except when form FX4 or FX8 is used, these forms being provided for instances which the other forms do not exactly fit. The Commission does not require the substitution of concurrence form FX5 for form FX4, now on file, which covers the authority provided for in the new form FX5, but will welcome such substitution. For all new concurrences forms will be issued as specified in the several Rules, and FX4 or FX8 only when neither of the other forms provides for the authority it is desired to confer.

²³⁸ Rule 25, Tariff Circular 17-A.

¶ L. NUMBER OF CONCURRENCES AND AUTHORIZATIONS.

Each carrier will give authorizations and concurrences serial numbers, beginning with No. 1 in each series, as indicated by forms, and continuing in consecutive numbers as to each series, and keeping these numbers separate and apart from the I. C. C. numbers of tariffs.²³⁹

¶ M. REVOCATION EFFECTIVE.

A concurrence may be revoked by filing notice of such revocation with the Commission and serving same upon the carrier to which such concurrence was given. Such notice must specify the date upon which revocation is to be made effective, and must give at least sixty days' notice to the Commission and to the carrier to which concurrence was given. Corresponding revision of tariff or tariffs shall be made in the next supplement to or reissue thereof, and if necessary, supplement or reissue shall be made for the sole purpose of making such change lawfully effective or statutory notice upon the effective date stated in the notice of revocation.²⁴⁰

¶ N. SUBSIDIARY OR SMALL-LINE TARIFFS.

Subsidiary or small lines which do not wish to issue concurrences or tariffs may give to the parent or other line power of attorney to concur in tariffs, and also general concurrence FX4 or FX5, to file tariffs, and the carrier holding such authority and concurrence may give, and also receive, concurrences for itself and the lines for which it acts in one instrument. Such subsidiary or small lines must, however, be named in concurrences so given. In giving power of attorney to concur in tariffs, form FX1 will be modified by striking out from line six the word "file" and substituting the following therefor: "to give and receive concurrences in."²⁴¹

¶ O. CONFLICTING AUTHORITY TO BE AVOIDED.

In giving concurrences care must be taken to avoid proba-

²³⁹ Rule 26, Tariff Circular 17-A.

²⁴⁰ Ibid.

²⁴¹ Ibid.

bility of two or more agents or carriers naming conflicting rates or rules.²⁴²

¶ P. CARRIER ISSUING AUTHORITY OR CONCURRENCE IS NOT
RELIEVED FROM DUTY OF POSTING TARIFFS.

The granting of authority to issue tariffs under power of attorney, or concurrence, does not relieve the carrier conferring the authority from the necessity of complying with the law with regard to posting tariffs. It is proper to use tariffs issued under its authority for that purpose.²⁴³

¶ Q. USE OF CONSOLIDATED CONCURRENCES.

When consolidated form of concurrences FX6, FX7, or FX8, has been used and additions are to be made to the list of roads for which such agent acts under powers of attorney the necessity for a new set of consolidated concurrences presents itself. The Commission has suggested that trouble and inconvenience can be avoided by the issuance of powers of attorney authorizing such agent to receive concurrences provided in *Paragraphs J and K, supra*, this section, and the securing of new concurrences will be comparatively simple.²⁴⁴

¶ R. TARIFFS NOT CONCURRED IN ARE UNLAWFUL.

A properly accredited chairman of a tariff committee published tariffs for certain carriers for which he was the duly constituted attorney-in-fact for the purpose. A carrier declining to concur in his tariffs put a new cover on them and filed them as its own tariffs without securing the concurrence of the other carriers named therein. *Held*, That the tariffs so adopted were unlawful and could not be used by the carrier.²⁴⁵

¶ S. CONCURRENCE IN TARIFFS OF CARRIERS IN ADJACENT
FOREIGN COUNTRIES.

The Commission has held that, "Through rates and fares from points in the United States to points in foreign countries

²⁴² Rule 26, Tariff Circular 17-A.

²⁴³ *Ibid*.

²⁴⁴ See note 11, *supra*.

²⁴⁵ Rule 13, Con. Rul. Bul. No. 4 (Dec. 2, 1907).

adjacent thereto and through rates and fares from points in adjacent foreign countries to points in the United States are a great convenience, and the Commission therefore desires to permit and encourage the publication and filing of such through rates and fares under lawful and proper conditions. Therefore, and until further order of the Commission:²⁴⁶

“A joint tariff naming rates or fares from a point in the United States to a point in Mexico or in Canada; from a point in Mexico or in Canada to a point in the United States; from a point in Mexico through the United States to a point in Canada; from a point in Canada through the United States to a point in Mexico; from a point in Mexico through the United States to a point in Mexico; from a point in Canada through the United States to a point in Canada; from a point in the United States through Mexico or through Canada to a point in the United States, must be concurred in, in form prescribed in these regulations and without reservation by all lines that are parties to the through rates or fares and that participate in transportation thereunder; or, a statement of the divisions of the rates or fares accruing to the roads in the United States to or from the border must be incorporated in the tariff or be filed with the Commission together with and at the same time the tariff itself is filed.”²⁴⁷

§ 479. Letter of Transmittal accompanying Tariffs filed with the Commission.

All tariffs that are filed with the Commission will be accompanied by a letter of transmittal, on paper 8 by 10½ inches in size and to the following effect:²⁴⁸

[*Name of carrier in full.*]

General Freight Department,

[*Date*], ...

Advice No.

To the Interstate Commerce Commission,

Washington, D. C.:

Accompanying schedule is sent you for filing, in compliance with

²⁴⁶ Rule 72, Tariff Circular 17-A as amended by Supplement No. 1 thereto.

²⁴⁷ Ibid.

²⁴⁸ Rule 27, Tariff Circular 17-A.

REGULATION—48.

the requirements of the Act to Regulate Commerce, issued by and bearing

I. C. C. No. ...

Supp. No. ..., to I. C. C. No. ..

Effective, 19...;

and is concurred in by all carriers named therein as participants, under continuing concurrences or authorizations now on file with the Interstate Commerce Commission, except the following-named carriers, whose concurrences are attached hereto:

.....

[Signature of filing agent.]

A separate letter may accompany each schedule, or the form may be modified to provide for filing under one letter as many schedules as can conveniently be entered.²⁴⁹

NOTE.—If receipt for accompanying schedule is desired the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned as receipt.²⁵⁰

§ 480. Basing or Proportional Tariffs must be Specific.

Tariffs containing basing or proportional rates must specify clearly the extent and manner of their use, and tariffs that are especially intended for use in connection with published basing rates must show the I. C. C. numbers of the tariffs in which bases may be found.²⁵¹

§ 481. Distance Tariffs.

¶ A. DISTANCE TARIFF MAY BE USED WHEN NO OTHER RATES ARE PROVIDED.

It is permissible for a carrier, or for two or more carriers, to issue a distance tariff for use in determining rates on its, or their own lines, but only in cases where no other rates are provided.²⁵²

¶ B. NOTATION ON DISTANCE TARIFFS.

Tariffs issued in accordance with the preceding paragraph must bear on their title page the following notation:

²⁴⁹ Rule 27, Tariff Circular 17-A.

²⁵⁰ Ibid.

²⁵¹ Rule 5, Tariff Circular 17-A.

²⁵² See note 62, *supra*.

Rates shown herein may be used only when no other rates apply. When governed by classification which also contains distance rates they will take precedence over the distance rates in such classification. They may not be used either by themselves or in combination in preference to any specific tariff rates.²⁵³

¶ C. DISTANCE TARIFF MAY BE INCLUDED IN TARIFF OF
SPECIFIC RATES.

A distance tariff may be included in a tariff of specific rates together with the following rule:

If the use of the distance tariff on page of this tariff makes a lower charge on any shipment than the specific rate shown in this tariff such lower charge will apply.²⁵⁴

¶ D. OFFICIAL LIST OF POINTS AND DISTANCES.

Every carrier that uses a distance tariff, which is or may be used in connection with rates on interstate shipments, must incorporate therein an official list of all the points, in connection with which the tariff may apply, showing in proper arrangement the distance between them; or must give therein reference by I. C. C. number to the issue that contains such list.²⁵⁵

A carrier may show in a tariff publication under I. C. C. number an official list of its points and may show therein distances, prepay points, billing instructions to points not on the line of such road, etc. If such publication contains no rates and no rules or regulations that affect the charges on any shipments, amendments to it may be issued on one day's notice to the public and to the Commission. Such supplement so issued must bear on title page notation: "Issued under authority of Rule 10, Tariff Circular 17-A." If, however, such publication contains any rate or any rule or regulation that can affect a charge upon any shipment, no change in the publication may be made except upon statutory notice or on special permission for shorter time. No supplement to such publication, whether issued under authority of this rule or on statutory notice, or under special permission, may con-

²⁵³ Rule 27, Tariff Circular 17-A.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

tain notice of any change effective prior to the effective date of the supplement.²⁵⁶

Rates to or from new points on old lines of road may not be established, nor rates to or from old points be withdrawn, except upon statutory notice or under special permission.²⁵⁷

§ 482. Fast Freight Line Guide Books.

¶ A. ISSUANCE.

Fast freight line billing or instruction books which are, by reference, made part of carrier's tariffs, are in effect tariffs. The following method of publication and filing of such books and of concurring therein may be followed:²⁵⁸

The interested carriers may arrange for a carrier of their number to execute power of attorney Form FX1, appointing an agent with authority to issue the billing or instruction book in the name, place, and stead of the carrier giving the power of attorney. The publication must show on its title page that it is issued by the person designated in the capacity of agent for the carrier that gives him power of attorney.

It will be sufficient for each of the other initial carriers that uses the billing or instruction book in connection with its tariffs to give concurrence in that book, running to the carrier that issues the book, on Form FX2 or FX5; and for all carriers that participate in the publication as intermediate or terminal carriers to each give general concurrence FX3 or FX4 in the tariffs issued by the carrier granting power of attorney, or its agent.

Concurrences Form FX3 will, without modification, include the billing or instruction books issued by a carrier to which such concurrence has been given, or by its agent under power of attorney, but if such publication names or affects rates *from* the station on lines of concurring carrier concurrence FX2, FX4, or FX5 must be used.

²⁵⁶ Rule 27, Tariff Circular 17-A.

²⁵⁷ Ibid.

²⁵⁸ Rule 15, Tariff Circular 17-A.

¶ B. TARIFF MAY REFER TO FAST FREIGHT LINE BILLING BOOKS.

A tariff may contain rates to base points which must be concurred in by intermediate and terminal carriers over the lines of which the rates apply to such base points, and when the issuing carrier is a party under proper form of concurrence or power of attorney in a billing or instruction book, such tariff may provide for the application of rates to points as specified in the billing or instruction book by specific provision in the tariff, and reference to the I. C. C. number of the billing or instruction book. It is not necessary that such tariff should specify names and concurrence forms and numbers of the intermediate and terminal carriers which are shown as participating carriers in the billing or instruction books. The billing or instruction book is made a part of the tariff by specific reference, and the carriers concurring in the billing or instruction book are thereby made lawful participants in the application of the rates named in the tariff to the points on concurring carrier's line, as authorized in the billing or instruction book.²⁵⁹

§ 483. Tank Line Gauge Books.

A tariff publication confined to information and regulations governing the use of tank cars may be issued, and, except as hereinafter specified, may be supplemented only on statutory notice or under special permission. Supplements to such publication which contain no changes except additions of cars not before listed, substitution of new for old cars, changes in ownership of cars, and corrections in capacities of cars already listed may be issued and made effective upon one day's notice to the Commission and to the public, as required by law.²⁶⁰

In connection with this rule, regulations as to number of supplements to a publication and the volume of supplemental matter that may be contained therein as provided in "*Amendments and Supplements*," Section 473, *ante*, must be observed; and when changes are made on short notice hereunder and

²⁵⁹ Rule 15, Tariff Circular 17-A.

²⁶⁰ See note 62, *supra*.

are incorporated in supplement with other matter brought forward from previous supplement such other matter must be plainly noted as reissued from a former supplement (see "*Amendments and Supplements to Tariffs*," *Section 473, ante*), and no changes except those above specified may be included.²⁶¹

§ 484. Tariffs Governing the Transportation of Explosives.

Under a special act of Congress the Commission prescribed certain regulations governing the transportation of explosives. Such regulations are law to the carriers as well as to the shippers, and they cannot be changed except by act of Congress or by the Commission. The Commission has ruled that it is therefore not considered necessary for each carrier to file with the Commission copy of such regulations as a tariff issue, but it is considered necessary that each tariff which contains rates for the transportation of explosives shall also contain notice that such rates are applicable in connection and in compliance with the regulations fixed by the Interstate Commerce Commission. This provision must be in every tariff issued after November 9, 1908, on which date this ruling was made. The Commission ruled that this provision must be incorporated in tariffs existing at the date by reissue or supplement as early thereafter as practicable.²⁶²

For copy of the regulations prescribed by the Interstate Commerce Commission governing the transportation of explosives, see *Section 455, ante*.

§ 485. Tariffs covering Transportation strictly for the United States, State, or Municipal Governments need not be Published or Filed.

Section 22 of the Act authorizes the carriage, storage or handling of property free or at reduced rates for the United States, State or Municipal Governments.²⁶³

If title to property, such as postal cards, passes to the Government at the point of manufacture, the carrier may agree

²⁶¹ See note 62, *supra*.

²⁶² Rule 106, Con. Rul. Bul. No. 4 (Nov. 9, 1908).

²⁶³ Rule 33, Con. Rul. Bul. No. 4.

upon a rate to be applied for transporting it for the Government to another point, without filing a tariff with the Commission. But if the manufacturer under his contract is required to deliver to the Government at such other point, the transportation must be under the published tariff rate. In other words, if the shipment is made directly by the Government, this rate may be fixed by the carrier without posting and filing the tariff, but not otherwise.²⁶⁴

§ 486. Tariffs covering Freight received in the United States and Carried through a Foreign Country to any Place in the United States.

¶ A. DUTY OF CARRIERS TO PRINT AND POST SCHEDULES OF RATES.

Any common carrier subject to the provisions of the Act to Regulate Commerce receiving freight in the United States to be carried through a foreign country to any place in the United States shall in like manner, as other carriers subject to the Act, print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment.²⁶⁵

¶ B. FREIGHT SUBJECT TO CUSTOMS DUTIES IN CASE OF FAILURE TO PUBLISH THROUGH RATES.

Any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by the Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.²⁶⁶

²⁶⁴ Rule 36, Con. Rul. Bul. No. 4.

²⁶⁵ See note 1, *supra*.

²⁶⁶ *Ibid*.

§ 487. Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required.

Each carrier files tariffs under I. C. C. numbers, which are presumed to be used consecutively. Occasionally a tariff or supplement is received which does not bear I. C. C. number next in numerical order to that borne by the last one filed. This is sometimes occasioned by the missing number having been assigned to a tariff that is in course of preparation. The Commission has requested that in so far as is possible carriers will file tariffs and supplements in consecutive numerical order of I. C. C. numbers. If from any cause this is not done in any instance, the tariff or supplement that is filed with an I. C. C. number that is not consecutive with the last number filed must be accompanied by a memorandum explaining as to the missing number or numbers.²⁶⁷

§ 488. Withdrawal of Filed Tariffs not permitted.

The Commission has stated that not infrequently it is requested to return to carriers tariff publications which have been received and filed by it in the ordinary course of business. That such requests are usually based on the desire to substitute some corrected or changed publication for the one that has been filed. The Commission held, that manifestly it would be improper for it to permit such substitutions or to surrender any tariff publication duly and properly received and filed by it, unless such surrender is caused by rejection of such publication by the Commission because of illegality or irregularity in connection therewith. That to surrender publications duly filed and permit the substitution of others would involve a species of falsification of the record which could not be permitted.²⁶⁸

§ 489. Equalizing Rules or Tariffs.

In the not distant past many carriers issued circulars or tariff rules which in effect and substance stated that they would meet any rate made by a competitor or share in any

²⁶⁷ See note 13, *supra*.

²⁶⁸ Rule 70, Tariff Circular 17-A.

through rate made by a connecting carrier for the purpose of meeting or protecting any rate via another route or gateway. Those rules plainly intended and contemplated that the rates which were not found in that carrier's tariffs should be applied to traffic moving over its lines.²⁶⁹

The law makes it clear that no carrier can lawfully apply to transportation over its lines any rate or change that is not plainly stated in its own tariff at that time, and that all such rules as are now referred to and all practices under such rules are unlawful.²⁷⁰

§ 490. Responsibility of Carriers under Tariffs.

¶ A. OLD SYSTEM OF CONCURRENCES WHICH WAS ALMOST UNIVERSALLY FOLLOWED, AND WHICH WAS UNIVERSALLY ACCEPTED AND RECOGNIZED BY CARRIERS.

On November 15, 1907, the Commission issued the following ruling:²⁷¹ Prior to May 1, 1907, the date upon which the Commission's freight tariff rules became effective, no uniform or definite practice or rule was followed by carriers in regard to concurrence in joint tariffs. The plan most generally followed was for each carrier to file with the Commission a statement that it thereby concurred in any tariff, issued by any carrier, and in which it was shown as a participant, except when it gave to the Commission specific notice of non-concurrence in particular issues. Some carriers, however, did not file such a declaration, but accepted traffic and settlements under joint tariffs in which they were shown as participants, although no concurrence therein had ever been given.

The general, if not universal, understanding and practice was that every carrier had a right to issue tariffs containing joint through rates or fares over the lines of other carriers named therein as participants, to note therein that the carriers named as participants would certify their concurrence to

²⁶⁹ Rule 59, Tariff Circular 17-A.

²⁷⁰ Ibid.

²⁷¹ Rule 83, Tariff Circular 17-A.

the Interstate Commerce Commission, and for all to use such tariffs except in cases where carriers specifically certified to the Commission their nonconcurrence in certain publications.

To now undertake to check out and follow down definite and actual concurrence of carriers in tariffs issued prior to May 1, 1907, would be a hopeless task; and to declare unlawful all tariffs, and participation therein, which were not so definitely and actually concurred in, other than by use thereof, would be to overthrow practically all such joint tariffs and leave transportation in chaos.

Some carriers have sought to evade liabilities under such joint tariffs on the plea that they never concurred therein, although in each instance so far brought to notice, such carrier is shown to have accepted traffic and collected charges thereon in accordance with such tariff up to, and in some instances subsequent to, date of filing notice of nonconcurrence.

¶ B. UNDER TARIFFS FILED PRIOR TO MAY 1, 1907, CARRIERS ARE RESPONSIBLE, IN ACCORD WITH CUSTOM THEN GENERALLY FOLLOWED, EXCEPT WHEN AND AFTER THEY FILED SPECIFIC NOTICE OF NONCONCURRENCE IN CERTAIN ISSUES.

Such complications are impossible as to tariffs issued subsequent to May 1, 1907, if the Commission's tariff regulations are observed. The Commission cannot undertake to now excuse carriers from responsibilities placed upon them by tariffs that were issued prior to May 1, 1907, and in which they are named as participants in conformity with customs that were followed so generally and for so long a time as to render them binding upon those who did not give notice of nonconcurrence, except in accordance with and subsequent to filing of specific notices of nonconcurrence.

The Commission's tariff regulations require that the carrier or joint agent that issues a joint tariff shall, before issuing same, have secured the definite and affirmative concurrence of every carrier shown therein as a participant, and shall show in connection with the name of each participating carrier the

form and number of the instrument by authority of which that carrier is made a party to the tariff.

¶ C. CARRIER NOT BOUND BY BEING NAMED AS PARTICIPANT IN
TARIFF WITHOUT ITS AUTHORITY.

A carrier has no means of preventing another carrier from naming it as a party to a joint tariff without proper authority so to do. It cannot, however, be bound by such unauthorized act, and it is its obvious duty to refuse to recognize or apply any such unlawful issue. It should also at once call attention of the Commission and of the one that issued the tariff to such erroneous action.

¶ D. TARIFF LAWFUL AS TO CARRIERS SHOWN AS PARTICIPANTS
UNDER LAWFUL AUTHORIZATIONS AND UNLAWFUL AS TO
CARRIERS NAMED AS PARTICIPANTS WITHOUT LAWFUL AU-
THORIZATIONS.

If one or more carriers are, without proper authority, so shown as participating in any tariff and other carriers are lawfully shown as parties thereto, the use of the publication is unlawful as to the carriers that are named as parties thereto without proper authority and lawful as to those that are parties to it under proper authority. The carrier over whose line shipments or passengers are sent under a joint tariff is bound, by the terms of that tariff, if it has lawfully concurred therein, and, if it has not lawfully concurred therein, may not accept earnings in accordance therewith, but must demand for the service performed its lawful earnings according to its lawful tariff.

¶ E. RESPONSIBILITY FOR UNLAWFUL INCORPORATION OF A
CARRIER IN A TARIFF.

Responsibility for the unlawful incorporation of any carrier in a tariff will rest upon the carrier that issued the tariff, or, if the tariff is issued by a joint agent and attorney for two or more carriers, will rest upon that one of his principals that accepts and forwards the business under that tariff.

¶ F. POLICY OF COMMISSION ON COMPLAINTS.

In passing upon a complaint of overcharge growing out of improper or unlawful inclusion of any carrier's name in the list of participating carriers in the tariff under which the business was accepted and forwarded the Commission will apply the principles above stated.

§ 491. Tariffs regulating Switching or Terminal Charges between Carriers.

¶ A. JOINT RATE BETWEEN CONNECTING CARRIER AND SWITCHING OR TERMINAL ROAD.

If a joint rate applies to or from a point on a terminal or switching road, and such terminal or switching road receives a division of said rate which is not absorbed by a connecting carrier, the terminal or switching road must publish, post, and file, or concur in and post, the tariff containing the joint rate.²⁷²

¶ B. EVERY SWITCHING OR TERMINAL ROAD MUST FILE ALL CHARGES OR REGULATIONS WHICH ARE APPLIED TO INTERSTATE SHIPMENTS.

A switching or terminal road, even though its lines are purely intrastate, must publish, post, and file in accordance with the law and the Commission's regulations tariff or tariffs containing all its charges upon or for movements of interstate shipments; and this must be done whether or not any part or all of such terminal or switching road's charges on such shipments are paid or absorbed by connecting carriers.²⁷³

¶ C. WHERE THE SWITCHING OR TERMINAL ROAD'S CHARGES ARE ADDED TO THE RATE.

If a switching or terminal road's charges are to be added to the tariff charges of a connecting carrier the tariff of such connecting carrier quoting such rates to or from the point at which such terminal or switching road is located must clearly

²⁷² See note 62, *supra*.

²⁷³ *Ibid*.

state that shipments thereunder are subject to additional charges for terminal service in accordance with the current tariffs of terminal or switching roads as same are on file with the Interstate Commerce Commission.²⁷⁴

¶ D. WHERE THE SWITCHING OR TERMINAL ROAD'S CHARGES
ARE ABSORBED BY THE CONNECTING CARRIER.

If part or all of the charges of a terminal or switching road are to be absorbed by a connecting road, the tariff of such connecting road must specify that its rate includes originating or delivery services by the terminal or switching road, and that the connecting road will absorb the charges of such terminal or switching road in a specified sum, or, as per the current tariffs of the terminal or switching road (*naming it*) as on file with the Interstate Commerce Commission.²⁷⁵

¶ E. CHARGES COVERING SWITCHING SERVICES MUTUALLY
PERFORMED BY CONNECTING CARRIERS.

When connecting carriers other than terminal or switching roads switch for each other and absorb part or all of each other's charges, their switching charges must be shown in lawfully filed and posted tariffs, and their tariffs must also state the circumstances under which and the instances in which they will absorb other carriers' switching charges, and must specify that such absorption will be in a stated sum per 100 pounds, per ton, or per car, or, as per tariffs on file with the Interstate Commerce Commission.²⁷⁶

§ 492. Index of Freight Tariffs.

¶ A. CARRIERS MUST PUBLISH COMPLETE INDEX OF THEIR
TARIFFS.

Each carrier shall publish under proper I. C. C. number, post, and file a complete index of tariffs which are in effect and to which it is a party either as an initial or a delivering carrier.

²⁷⁴ See note 62, *supra*.

²⁷⁵ *Ibid*.

²⁷⁶ *Ibid*.

¶ B. ARRANGEMENT OF INDEX.

Such index shall be prepared in sections, as indicated in the following paragraphs, and shall show: (a) I. C. C. number; (b) carrier's own number; (c) index number; (d) initials of issuing road or agent; (e) issuing road or agent's number; (f) character of tariff or description of the articles upon which it applies; (g) where tariff applies from; (h) where tariff applies to.²⁷⁷

NOTE.—Items (b), (c), and (e) may be omitted. Items (f), (g), and (h) will be stated in concise general terms.

First Section. A list of all the tariffs as to which the carrier is an initial carrier. Commodity tariffs to be entered alphabetically under names of commodities or principal commodities. Tariffs applying to different groups of the same commodity must be grouped together; e. g., "Lumber—Hardwood;" "Lumber—Yellow Pine," etc.²⁷⁸

Following the specific commodity tariffs will be entered the general commodity tariffs, the class and commodity tariffs, and the class tariffs. Under each of these heads the application of the tariffs will be described by alphabetical arrangement of the points or territory from or to which they apply, in either the "From" or "To" column.

Under the head of "Miscellaneous Schedules" will follow list of schedules, such as billing books, classifications, exception sheets, switching tariffs, terminal charges, etc., each entered in alphabetical order.²⁷⁹

Second Section. List of all tariffs under which the carrier is a delivering carrier arranged alphabetically by names of issuing carriers or agents, with the items arranged by commodities and classes under each of such carriers or agents, as prescribed for the first section.

Third Section. A complete list of the numbers of tariffs of its own I. C. C. series arranged in numerical order.

If a carrier so desires, lists of its division sheets, official cir-

²⁷⁷ Rule 11, Tariff Circular 17-A.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

culars, etc., may appear in this publication. Tariffs covering specific circus movement and supplements to tariffs need not be included in indices.

¶ C. REVISION AND SUPPLEMENTS.

If any changes are made the index must be revised to date, either by reissue each month, or by supplement each month and reissue every six months. If supplements are used they must be constructed in accord with specifications as to construction of index, and shall show additions, changes, and cancellations made in index or previous supplement thereto. Not more than two supplements to any index may be in effect at any time, and the provisions under section on Amendments and Supplements must be observed with relation thereto.²⁸⁰

¶ D. NOTATION ON TITLE-PAGE.

Each index must bear on its title-page notations, as follows: "This index contains lists of tariff publications in effect on [*date of issue of index*];" to which may be added, "or which have been filed to become effective at a later date as shown within." If supplements to index will not be used, "No supplement to this index will be issued;" if supplements will be used, "Only two supplements to this index will be in effect at any time."²⁸¹

Each supplement to index must bear on title-page the notation. "This supplement contains corrections to and as in effect on [*date of issue of supplement*];" to which may be added, "or which have been filed to become effective at a later date as shown within."²⁸²

¶ E. DATE OF ISSUE BUT NO EFFECTIVE DATE.

The title-page of index or of supplement must show the date of issue thereof, which must correspond to date shown in notations above and must not bear an effective date. The rule

²⁸⁰ Rule 11, Tariff Circular 17-A.

²⁸¹ Ibid.

²⁸² Ibid.

requiring thirty days' notice does not apply to these indices and their supplements.²⁸³

NOTE.—This rule is also in rules governing passenger tariffs. One index containing both freight and passenger tariffs will be deemed sufficient, but if both are included in one index it must be given an I. C. C. number in both freight and passenger series and four copies must be sent to the Commission.²⁸⁴

§ 493. Tariffs containing Rail-and-Water and All-Water Rates.

Tariffs containing rail-and-water and all-water rates applicable via routes upon which it is necessary to close navigation during a portion of the year, and which do not become effective and expire by specified expiration within the same season of navigation, may provide for suspension and restoration of the rail-and-water rates and the all-water rates named therein under the following regulations:²⁸⁵

¶ A. NOTATION ON TITLE-PAGE OF TARIFF.

The following notation shall appear on the title-page of the tariff: "The rates named herein for rail-and-water and all-water transportation are subject to suspension at the close of navigation and restoration on the opening of navigation of [*here insert the name of the water carrier or carriers specified in the tariff*] on notice as provided on page ... of this tariff."

¶ B. RULE IN TARIFF PROVIDING FOR SUSPENSION AND RESTORATION OF RATES.

In the rules governing the tariff shall appear the following.²⁸⁶

In anticipation of opening of navigation of [*here insert the name of water carrier or carriers named in the tariff*] restoration of the rail-and-water and all-water rates contained in this tariff and in effective supplements thereto which were in force on the date the rates were last suspended or which have subsequently been made effective, will be announced by supplement to this tariff which will be filed with the Interstate Commerce Commission, be posted at points from which the rates apply, and become effective not less than three days thereafter.²⁸⁷

²⁸³ Rule 11, Tariff Circular 17-A.

²⁸⁴ Ibid.

²⁸⁵ Rule 12, Tariff Circular 17-A.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

NOTE.—This effective date shall not be such as to follow more than thirty days at point of transshipment for reforwarding by the water carrier.²⁸⁸

The rates in this tariff and in supplements thereto for rail-and-water and all-water transportation are effective only during the season of navigation of [*here insert the name of water carrier or carriers named in the tariff*] until [*here insert date upon which freight can be forwarded from point of shipment and with reasonable certainty reach the point of transshipment prior to the last sailing of water carrier.*] From that date and until announcement by supplement to this tariff to the date which wholly suspends rates for the season, shipments will be accepted under this tariff only subject to the provision that in the event of such shipment being in excess of the available vessel capacity at time of arrival at port of transshipment or of arrival too late for forwarding by vessel, the same will be forwarded via all-rail route and be subject to the tariff rates via such all-rail route in effect on the date of shipment from the point of origin; shipping receipts, bills of lading, and waybills must bear notation to this effect. The supplement announcing the close of navigation and the suspension of rail-and-water, and all-water rates named in this tariff and in its effective supplements will be filed with the Interstate Commerce Commission and will be posted at points from which the rates apply not less than three days in advance of the date from which the rates will be suspended from points of original shipment.

¶ C. ROUTES OTHER THAN GREAT LAKES MAY SUSPEND OR RESTORE ON ONE DAY'S NOTICE.

Where the tariff suspended or restored under this rule applies to joint transportation by rail and river, or canal, or inland lakes other than the Great Lakes, such tariffs may be suspended or restored on a like notice of one day instead of three days.²⁸⁹

¶ D. SUPPLEMENTS MAY CONTAIN.

Supplements issued under this rule announcing suspension and restoration of rail-and-water and water rates in tariffs must not contain anything except such suspension or restoration notice or notices. Only one such supplement announcing suspension or restoration of the rates in a tariff may be in effect at any time, and such supplement will not be counted against the number of supplements permitted to such tariff under rule relating to Amendments and Supplements.²⁹⁰

²⁸⁸ Rule 11, Tariff Circular 17-A.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

¶ E. SUSPENDED TARIFFS MAY BE REISSUED OR AMENDED.

Rail-and-water and all-water rates suspended under this rule may be reissued or amended during such period of suspension upon statutory notice the same as though the rates were in effect and active use, but the restoration of the rates by supplement notice will not advance the effective date of any supplement to the tariff which has not on the date of restoration become effective. Supplements made effective prior to the date of restoration will be made effective on a given date, or may be stated to be "Effective with restoration of tariff and supplements for season of 19... [*to be announced by subsequent supplement*], but not earlier than [*statutory notice*] 19... , nor earlier than noted in individual items."

Statutory notice of suspension, withdrawal or restoration of rates or regulations must be given as to all tariffs that do not contain the provisions of paragraphs A and B of this section.²⁹¹

¶ F. STORAGE AND TRANSIT PRIVILEGES.

The provisions of the section applying to publication of terminal charges, diversion, reconsignment, transit privileges, etc., will also apply to carriers in rail-and-water lines and to tariffs applying on such lines, and in addition thereto, if storage or transit privilege is given at port of transshipment on the Great Lakes in connection with a joint rail-and-water rate upon which shipment moves from point of origin, the initial carrier's tariff which contains such rate must also contain the privilege or the charge, or give specific reference by I. C. C. number to the tariff of the carrier that grants the privilege or performs the service which contains such regulation and charges connected therewith.²⁹²

§ 494. Rate Schedules rejected by the Commission.

When a schedule is rejected by the Commission as unlawful, the records so show and, therefore, such schedule should not thereafter be referred to as canceled, amended, or otherwise except to note on publication that is issued in lieu of such re-

²⁹¹ Rule 11, Tariff Circular 17-A.

²⁹² Ibid.

jected schedule, "In lieu of rejected by Commission;" nor should the number which it bears be again used.²⁹³

§ 495. Receipt by and Filing of Tariffs with the Commission does not Relieve Carriers from Liability for Violation of the Act or Regulations thereunder.

The law affirmatively imposes upon each carrier the duty of filing with the Commission all of its tariffs and amendments thereto, as prescribed in the law or in any rule relative thereto which may be announced by the Commission, under penalty for failure so to do, or for using any rate which is not contained in its lawfully published and filed tariffs. The Commission will give such consistent assistance as it can in this respect, but the fact that receipt of a tariff, or supplement to a tariff, is acknowledged by the Commission, or the fact that a tariff or supplement to a tariff, is in the files of the Commission will not serve or operate to excuse the carrier from responsibility or liability for any violation of the law, or of any ruling lawfully made thereunder, which may have occurred in connection with the construction or filing of such tariff or supplement.²⁹⁴

§ 496. Rates Prescribed in Commission's Decisions must be Promulgated in Tariffs and Commission Notified.

Rates prescribed by the Commission in its decisions and orders after hearings upon formal complaints shall, in every instance, be promulgated by the carriers against which such orders are entered in duly published, filed, and posted tariffs, or supplements to tariffs, and notice shall be sent to the Commission that its "order in case No. . . . has been complied with in item . . . , page . . . of tariff, I. C. C. No. . . . , or supplement . . . to tariff, I. C. C. No."²⁹⁴

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon five (5) days' notice to the Commission and to the public, and if made effec-

²⁹³ See note 13, *supra*.

²⁹⁴ *Ibid*.

tive on less than statutory notice, either under this rule or under special authority granted in the order in the case, shall bear on its title-page the notation, "In compliance with order of Interstate Commerce Commission in case No."²⁹⁵

§ 497. Circulars announcing Compliance with Orders of Court.

Circulars announcing or explaining the attitude and course of carriers under injunction of a court, relating to tariff rates or regulations, must not be issued as supplements to a tariff nor given I. C. C. numbers unless they are issued on statutory notice or under special permission from the Commission for shorter time. The Commission has stated, that it will, however, be pleased to have copies of such circulars and the information therein contained.²⁹⁶

§ 498. Maintenance of Relative Adjustment in issuing Tariffs to Conform with Formal Order of the Commission.

¶ A. RIGHT OF CARRIER PARTY TO A CASE OR PARTICIPANT IN JOINT TARIFF INVOLVED IN SUCH CASE TO ADJUST ITS RATES TO CONFORM TO ORDER OF COMMISSION.

In establishing rates or regulations under an order of the Commission in a formal case, the carrier or carriers that are actually and on the record parties to the case, or that are lawful parties to a joint tariff in which the rate or regulation that is prescribed is published by some carrier that is party to the case, may include in the change or changes made in compliance with the Commission's order commodity or commodities that are grouped with that or those which are specified in the order; and may also include adjustment of other points in order to preserve established grouping or relation of points, and may also include adjustment of rates to same points on other commodities for the purpose of maintaining established relation of rates between commodities: *Provided*, all such

²⁹⁵ See note 13, *supra*.

²⁹⁶ *Ibid*.

changes made by authority of this rule shall be effected by reductions in rates or charges.²⁹⁷

¶ B. CARRIER NOT PARTY TO A CASE NOR PARTICIPANT IN JOINT TARIFF AS ABOVE MUST SECURE SPECIAL PERMISSION OF COMMISSION.

If a carrier that is not a party to the case or to the joint tariff desires to make on less than statutory notice the same changes that are made under the order by carrier that is party to the same, it must secure special permission so to do.²⁹⁸

§ 499. Rates for hauling Private Cars.

It is the legal duty of a carrier to publish and file its rates and regulations for the movement of private cars.²⁹⁹

§ 500. Industrial or Terminal Roads as Parties to Joint Tariffs.

An industrial or terminal railroad may become a party to joint tariffs, provided such road is a common carrier.³⁰⁰

§ 501. Tariffs cannot be given a Retroactive Effect.

Tariffs cannot be given a retroactive effect; they cannot be made to apply to conditions other than those existing upon the date when such tariffs became effective.³⁰¹ It would be altogether intolerable if changes could be made retroactive, as well from the carrier's standpoint as from the shipper's.

§ 502. All State or other Rates used for Interstate Shipments must be Posted and Filed.

Rates for through shipments are often made by adding together two or more rates. All State or other rates used in combination for interstate shipments must be posted at points

²⁹⁷ See note 13, *supra*.

²⁹⁸ *Ibid*.

²⁹⁹ *Carr v. Nor. Pac. Ry. Co.* (1901), 9 I. C. C. R. 1.

³⁰⁰ *Central Yellow Pine Association v. V. S. & P. Rd. Co. et al.* (1904), 10 I. C. C. R. 193; *Re Division of Joint Rates and other allowances to Terminal Railroads*, 10 I. C. C. R. 385.

³⁰¹ *In the Matter of Through Routes and Through Rates* (1907), 12 I. C. C. R. 164.

from which they apply and filed with the Commission, and can only be changed as to such traffic in accordance with the terms of the Act.³⁰²

When rates established to apply between points within a single State are applied as part of combination rates on transportation between different States, such State rates along with the interstate rates with which they are combined, must be published at stations and filed with the Commission as provided by Section 6 of the Act to Regulate Commerce.³⁰³

Under the Act to Regulate Commerce, requiring several common carriers operating a through line engaged in interstate commerce to file schedules of rates constituting the basis of a through interstate rate, each carrier, though operating a line wholly within a State, which line is a portion of a through route engaged in interstate commerce between several connecting carriers, is bound to comply with such Act.³⁰⁴

§ 503. All Local Tariffs should have I. C. C. Numbers and be Posted and Filed.

The Commission believes it is proper that all local tariffs be given I. C. C. numbers and be posted and filed with the Commission in the manner prescribed in the Act.³⁰⁵

§ 504. Tariffs of Water Carriers.

¶ A. INLAND WATER CARRIERS.

Inland water carriers are not required to publish, post, nor file their tariffs of rates unless they are engaged in interstate commerce under a common control, management, or arrangement for a continuous carriage or shipment with a railroad as described in the first section of the Act to Regulate Commerce.

³⁰² See note 11, *supra*.

³⁰³ In the Matter of Export Rates from Points East and West of the Mississippi River, 8 I. C. C. R. 185.

³⁰⁴ *United States v. N. Y. C. & H. R. Rd. Co.* (1907), 153 Fed. Rep. 630; *Dist. Ct. W. D. New York, Re Export Rates on Corn, etc.* (1899), 8 I. C. C. R. 185.

³⁰⁵ See note 11, *supra*.

¶ B. OCEAN CARRIERS.

Ocean carriers between ports of the United States and foreign countries *not adjacent* are not subject to the terms of the Act to Regulate Commerce, and under its present provision cannot become subject thereto; nor to the jurisdiction of the Commission.

Neither are ocean carriers engaged in the coastwise commerce between our different States or between points in the United States and adjacent foreign countries, unless, of course, they are engaged in such commerce in connection with a rail carrier under a common control, management or arrangement for a continuous carriage or shipment in accordance with Section 1 of the Act.

§ 505. Lessee Road not serving Public as Common Carrier.

For operating purposes only a carrier leased 20 miles of its lines to another railroad company. The contract required the lessee for an agreed compensation to be paid to it by the lessor, to operate the lessor's trains and to maintain its way, tracks, and appurtenances, the rates and charges to be collected by the lessor and the lessee to have no direct dealings with the public. On the facts as stated in the inquiry, the Commission *held*, That the lessor must publish the rates, fares, and charges, and the lessee need not be a party to the tariffs nor concur therein, but is simply a contractor performing certain services for the lessor.³⁰⁶

§ 506. Tariffs Covering Export and Import Traffic.

¶ A. RATES TO BE PUBLISHED AND FILED WHEN THE INLAND RAIL CARRIER AND OCEAN CARRIER ARE OPERATING SEPARATELY.

The Act to Regulate Commerce provides that the Commission shall exercise jurisdiction over the inland portion of the haul, either to or from a foreign country; and it must logically and necessarily follow that the rate which must be filed with

³⁰⁶ Rule 180, Con. Rul. Bul. No. 4 (May 10, 1909).

the Commission under Section 6 of the Act is the rate governing such movement.³⁰⁷

On foreign commerce the rate to be published with the Commission should be the rate to the port and from the port—an open rate, which any who desire to do so may use with equal advantage.³⁰⁸

The rates of transportation from places in the United States to ports of transshipment, and from ports of entry to places in the United States, of properties in foreign commerce carried under through bills of lading, are required to be filed and published by the amended Interstate Commerce Act.

That public policy urgently requires that the inland transportation of import and export commerce should be subject to the Act to Regulate Commerce, and that the publishing and maintaining of tariffs upon such traffic imposes in most instances no hardship upon the carrier.³⁰⁹

The Supreme Court of the United States has decided that if foreign commerce is carried under an aggregate through rate which is the sum of the ocean rate and the rate from or to a place in the United States to or from the port of transshipment or of entry, the latter rate is required to be filed and published.³¹⁰ Such rates must be published the same as domestic rates,³¹¹ and the tariff should include all terminal charges and any expenses connected with the transportation.³¹²

The inland carriers of traffic exported to or imported from

³⁰⁷ *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.* (1908), 13 I. C. C. R. 266; see also *Kemble v. B. & A. Rd. Co.* (1889), 8 I. C. C. R. 110.

³⁰⁸ *Ibid.*

³⁰⁹ In the *Matter of the Publication and Filing of Tariffs on Export and Import Traffic* (1904), 10 I. C. C. R. 55; see also in *Re Export and Domestic Rates*, 8 I. C. C. R. 214.

³¹⁰ *Armour Packing Co. et al. v. United States* (1907), 153 Fed. Rep. 1, affirmed in 82 C. C. A. 135, affirmed in 209 U. S. 56, 52 L. ed. 681, 28 Sup. Ct. Rep. 428; see also *Re Export and Domestic Grain Rate*, 8 I. C. C. R. 214 (1899).

³¹¹ See note 309, *supra*.

³¹² *New York Produce Exchange v. N. Y. C. & H. R. R. Co.* (1889), 2 I. C. R. 553; 3 I. C. C. R. 137; see also *New Orleans Cotton Exchange v. L. N. O. & T. P. Ry. Co.* (1891), 4 I. C. C. R. 694; 3 I. C. R. 523.

a foreign country not adjacent must publish their rates to the ports and from the ports, and such rates must be the same for all regardless of what ocean carrier may be designated by the shipper.³¹³

¶ B. WHERE A JOINT THROUGH RATE HAS BEEN ESTABLISHED BETWEEN THE INLAND RAIL CARRIER AND THE OCEAN CARRIER.

The United States Supreme Court has held that if foreign commerce is carried under a joint through rate by virtue of a common control, management, or arrangement of the inland and ocean carrier, the joint rate is required to be filed and published.³¹⁴

The Commission has held that as a matter of convenience to the public, carriers may publish in their tariffs through export and import rates to or from foreign ports as they may make in connection with ocean carriers, but that such rates must, however, distinctly state the inland rate; and need not be concurred in by the ocean carrier, because concurrence can be required from and effective against, only carriers subject to the Act.³¹⁵

¶ C. STEAMSHIP CHARGES MAY BE SHOWN IN INLAND CARRIERS' TARIFFS.

It is permissible for a carrier to state in connection with its inland rates the additional steamship charges which go to make up through rates to or from foreign destination.³¹⁶

The inland rate, however, must be open to all alike regardless of what ocean carrier may be designated by the shipper.³¹⁷

¶ D. STATUTORY NOTICE REQUIRED—EXCEPTION.

The Commission has ruled that whatever plan of published export and import rates is followed the tariffs must be filed and posted, and may be changed only upon statutory notice or under special permission from the Commission for a shorter time, except that, in consideration of unusual and special cir-

³¹³ Rule 71, Tariff Circular 17-A.

³¹⁴ See note 310, *supra*.

³¹⁵ See note 313, *supra*.

³¹⁶ *Ibid*.

³¹⁷ *Ibid*.

cumstances surrounding the movement of traffic exported to or imported from foreign countries not adjacent to the United States and which moves through parts of the United States or Canada on the Pacific Ocean, as to said traffic and confined to tariffs which contain only rates applicable to such traffic, the Commission by its order of October 24, 1908, authorized carriers to make changes in said rates upon notice to the Commission and to the public, in manner prescribed by law, of three days, as to changes which effect reductions in rates or charges and like notice of ten days as to changes which effect increases in rates or charges.³¹⁸ Tariffs issued upon short notice under authority of that order must bear notation, "Issued under authority of Rule 71, Tariff Circular 17-A."

¶ E. POSTING TARIFFS ON EXPORT AND IMPORT TRAFFIC.

The publication of inland joint tariffs for the transportation of foreign merchandise to inland points in the United States should be made at the port of entry and also at the point of destination of the freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry and where it is delivered at the place of destination in the United States.³¹⁹

§ 507. Maxima Rates not Specific Rates.

¶ A. RATES AND THEIR APPLICATION MUST BE SPECIFICALLY STATED.

The rulings of the Commission prohibit including in a tariff any rule or regulation which in any way or in any terms authorizes substituting for any rate named in the tariff a rate found in any other tariff or made upon any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part. These rules are intended to bring about entire discontinuance of tariff rules which provide that rates named in the tariff will apply to certain points "as maxima," or that if a combination on some

³¹⁸ See note 313, supra.

³¹⁹ New York Board of Trade, etc., v. Pennsylvania Co. (1891), 4 I. C. C. R. 447; 3 I. C. R. 417.

gateway or basing point makes less than the rates named in the tariff such combination will apply, or for equalizing or protecting any fare via another line or route or gateway, etc. The intent is that tariffs shall state in specific, clear and unambiguous terms the rates and their application.³²⁰

¶ B. RATES TO OR FROM INTERMEDIATE POINTS.

The rulings of the Commission provide that a tariff shall contain complete alphabetical indices of the points from and to which it applies. The Commission has held that this is not to be understood as prohibiting the incorporation in a tariff of a rule providing for the affirmative and definite application of the rates named in that tariff to or from points not indexed and which are directly intermediate on the same line with the points that are indexed.³²¹

¶ C. SPECIFIC JOINT THROUGH RATES MUST BE INVARIABLY APPLIED.

In every instance where there is a *specific* rate from point of origin to point of destination it must be applied to through freight regardless of possible lower combinations.³²²

§ 508. Copies of Schedules and Tariffs of Rates to be preserved as Public Records in custody of Secretary of Commission.

The statute provides that copies of all schedules and classifications and tariffs of rates and charges filed with the Commission in accordance with the provisions of the Act shall be preserved as public records in the custody of the secretary of the Commission.³²³

§ 509. Certified Copies of Tariffs as Prima Facie Evidence.

The Act provides that the copies of schedules and classifications and tariffs of rates, and charges, and of all contracts, agreements, and arrangements between common carriers filed

³²⁰ Rule 64, Tariff Circular 17-A.

³²¹ Ibid.

³²² Ibid.

³²³ Act to Regulate Commerce. Section 16 (as amended June 18, 1910).

with the Commission and in custody of the secretary of the Commission, shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, or arrangements made public records as aforesaid, certified by the secretary under the seal of the Commission shall be received in evidence with like effect as the originals.³²⁴

§ 510. Carriers cannot advance Charges to Water Carriers unless they are Parties to the Tariff.

Certain carriers have been in the habit of advancing the charges of sailing vessels, boats and barges bringing vegetables to their terminals to be forwarded to interstate destinations, and of entering the amount on waybills as charges in addition to their tariff rates. Upon inquiry whether the carriers may lawfully continue this practice it was held that if the boats are common carriers, making regular trips and offering their services to the general public they must file tariffs and the practice must be discontinued until they do so.³²⁵

§ 511. Departure from Published Tariff declared to be a Misdemeanor and Penalty Therefor.

See *Section 766, post.*

§ 512. Failure of Carrier to publish Rates a Misdemeanor and Penalty therefor.

See *Section 766, post.*

§ 513. Penalty for Failure of Carrier to comply with Tariff Regulations promulgated by Commission.

See *Section 767, post.*

§ 514. Express Company Freight Tariffs or Rate Schedules.

See *Chapter 31, post.*

³²⁴ Act to Regulate Commerce. Section 16 (as amended June 18, 1910).

³²⁵ Rule 62, Con. Rul. Bul. No. 4 (April 14, 1908).

CHAPTER XXXI.

EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

SECTION

515. Publication of Rates and Charges for Transportation.
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SECTION

- 541. Circulars Announcing Compliance with Orders of Court.
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- 544. Concurrence by Express Companies in Tariffs Issued and Filed by another Express Company or its Agents.
- 545. Letter of Transmittal accompanying Tariffs Filed with the Commission.
- 546. Withdrawal of Filed Tariffs not permitted.
- 547. Tariffs covering Export and Import Traffic.
- 548. Responsibility of Express Companies under Tariffs.
- 549. Maxima Rates not Specific Rates.

In considering the subject of tariffs of Express Companies it should be noted that all the general principles applicable to railroad freight tariffs are equally applicable to express tariffs and may be applied by analogy to such.

§ 515. Publication of Rates and Charges for Transportation.

See *Section 456, ante*.

§ 516. Filing Tariffs, Classifications, Exception Sheets, Supplements, Concurrences, etc., with the Interstate Commerce Commission.

¶ A. FILING BY PROPER OFFICER OR DESIGNATED AGENT.

Tariffs, classifications, and exception sheets and supplements thereto, shall be filed with the Commission by proper officer of the express company or by an agent designated to perform that duty.¹

¶ B. CONCURRENCE OF PARTICIPATING CARRIERS.

The concurrence of every carrier, amenable to the Act to Regulate Commerce, participating in the tariffs, etc., as stated in the preceding paragraph must be on file with the Commission or accompany the tariff or supplement.²

¹ Rule 13, Tariff Circular 16-A.

² *Ibid*.

¶ C. TWO COPIES OF ALL TARIFFS MUST BE FILED WITH THE
COMMISSION.

Express companies and their agents are directed, in filing schedules in compliance with the statute to transmit two (2) copies of each tariff, supplement, classification, or other schedule of rates or regulations, for the use of the Commission, both copies to be included in one package and under one letter of transmittal.³

¶ D. HOW TARIFFS FILED WITH THE COMMISSION MUST BE
ADDRESSED.

All tariffs sent for filing with the Commission must be addressed "Auditor, Interstate Commerce Commission, Washington, D. C."⁴

¶ E. TARIFFS MUST BE DELIVERED TO THE COMMISSION FREE
FROM ALL CHARGES OR CLAIMS FOR POSTAGE.

No tariff or supplement will be accepted by the Commission for filing unless it is delivered to the Commission, free from all charges or claims for postage.

¶ F. TARIFFS MUST BE DELIVERED TO THE COMMISSION WITHIN
FULL STATUTORY TIME.

All tariffs or supplements must be delivered to the Commission within the full thirty days required by law before the date upon which such tariff or supplement is stated to be effective. No consideration will be given to or for the time during which a tariff or supplement may be held by the Post-Office Department because of insufficient postage.⁵

For tariffs and supplements issued on short notice under special permission of the Commission, full thirty days' notice is not required, but literal compliance with the requirements for notice named in any permission granted by the Commission will be exacted and in accord with the policy and practice above outlined.⁶

³ Rule 14, Tariff Circular 16-A.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

¶ G. DISPOSITION OF TARIFFS RECEIVED BY COMMISSION TOO
LATE TO GIVE STATUTORY NOTICE.

A tariff or supplement that is received by the Commission too late to give the Commission the full thirty days' notice required by law, will be returned to the sender, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such tariff or supplement was received and the date of attempted correction.⁷ In other words, when a tariff or a supplement is issued and as to which the Commission is not given the statutory notice it is as if it had not been issued, and full statutory notice must be given of any reissue thereof. No consideration will be given to telegraphic notices in computing the thirty days' notice required.⁸

§ 517. Posting of Tariffs or Rate Schedules.

See *Section 458, ante*.

§ 518. Jurisdiction of the Interstate Commerce Commission
over the Publication, Posting and Filing of Express
Tariffs or Rate Schedules.

See *Section 459, ante*.

§ 519. Notice required for Publication of Rates and Changes
therein.

¶ A. STATUTORY NOTICE.

Section 6 of the Act as amended June 29, 1906, provides that:

"No change shall be made in the rates and charges, or joint rates and charges, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public, published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges will go into effect; and the proposed changes shall be shown

⁷ Rule 14, Tariff Circular 16-A.

⁸ *Ibid*.

by *printing new schedules*, or shall be plainly indicated *upon the schedules* in force at the time and kept open to public inspection."

¶ B. RATE CHANGES FILED AND PUBLISHED MUST BECOME EFFECTIVE AND CAN BE CHANGED ONLY ON THIRTY DAYS' NOTICE.

The provision of the Act quoted in the preceding paragraph plainly refers to rates which have already become effective, and also applies the term "proposed changes" to rates which have not become effective. It follows that after notice of a change in rates has been filed and published the new rates must be allowed to go into effect, and can only be withdrawn, canceled, or superseded upon notice filed and published for at least thirty days after the date when the rates have become effective. A tariff may contain a notation that rates therein stated will expire upon a date therein specified which is at least thirty days subsequent to the date on which such rates become legally effective, and this will be legal notice of the cancellation or withdrawal of such rates.⁹

¶ C. POWER OF INTERSTATE COMMERCE COMMISSION TO ALLOW CHANGES ON LESS THAN STATUTORY NOTICE.

Express companies must comply fully with the requirements of the law respecting the filing, publication, and taking effect of proposed rates unless upon application and for good cause shown the Commission, in the exercise of authority conferred upon it, shall allow rates to be changed or withdrawn upon less than thirty days' notice or by formal order otherwise modify such requirements. No regulation or rule of the Commission is authority to change rates or issue tariffs on less than statutory notice unless so specifically provided in the rule or regulation.¹⁰ The Commission in pursuance of its authority to permit changes on less than statutory notice has issued general orders applicable to special conditions and circumstances as noted in the succeeding paragraphs.

⁹ Rule 26, Tariff Circular 16-A.

¹⁰ Ibid.

¶ D. REQUESTS FOR PERMISSION TO AMEND TARIFFS ON LESS
THAN STATUTORY NOTICE.

As stated above the Act authorizes the Commission in its discretion and for good cause shown, to permit changes in tariff rates on less than statutory notice.¹¹ This authority should be exercised only in instances where special or peculiar circumstances and conditions fully justify it. Confusion and complication must follow indiscriminate exercise of this authority.¹²

Application to Commission.

Such application must be in proper form and over the signature of a general officer of the company, specifying title.¹³ The Commission has requested that as far as possible these applications be sent by mail and not by telegraph. Action will only be taken on receipt of the verified application.¹⁴

¶ E. WHERE FULL NOTICE WAS GIVEN BY COMPETING EXPRESS
COMPANY.

Desire to meet the rates of a competing express company which has given the full statutory notice of change in rates will not of itself be regarded as good cause for allowing changes in rates on a notice of less than thirty days.¹⁵

¶ F. PERMISSION TO CHANGE RATES ON SHORT NOTICE LIMITED
TO EMERGENCY OR NECESSITY.

This authority will be exercised only in cases where actual emergency and real merit are shown. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the omission or mistakes and be presented with reasonable promptness after issuance of the defective tariff.¹⁶

¹¹ Rule 29, Tariff Circular 16-A.

¹² Rule 31, Tariff Circular 16-A.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¶ G. AMENDMENT OF JOINT TARIFFS ON LESS THAN STATUTORY NOTICE.

A request from one party to a joint tariff for permission to amend such tariff on less than statutory notice necessarily raises some question of doubt as to the wishes or concurrence of other interested parties of the tariff. It is desirable and proper that any such permission given by the Commission should affect alike all parties to the tariff that is to be amended under it. The Commission therefore decided:

Applications by Express Company or Agent Authorized to File the Tariff.

That when an express company gives an agent authority to file tariff or tariffs and supplements thereto in its name, place, and stead, or concurrence in tariff or tariffs and supplements thereto which another express company or its agent may file thereunder, the agent or express company to which such authority or concurrence is given has, under the terms of the authority or concurrence, the power and the right to request, in the name and on behalf of the express companies participating in such tariff or tariffs, permission to amend same on less than statutory notice.¹⁷

Request must come from one who Issues the Tariff.

Such requests as to joint tariffs must be made by the agent or the express company that is authorized to file the tariff and in making them form same as that prescribed for use of individual carrier shall be used, except that the request must state that it is made in the name and on behalf of all parties to the tariff, and that formal authority to file the tariff, or formal concurrence in the tariff, is on file with the Commission from each of them.¹⁸

Concurring Express Companies Bound by Act of Authorized Agent.

Request will be signed and verified by the agent or officer who makes it, and every express company that has, by formal

¹⁷ See note 11, supra.

¹⁸ Ibid.

authority or concurrence, made itself a party to such tariff will be held bound by the act of its agent under such authority or by its concurrence.¹⁹

¶ H. REDUCTION OF JOINT RATE TO EQUAL SUM OF LOCALS.

Where a joint rate is in effect by a given route between any points which is higher than the sum of the locals between the same points, by the same or another route, and such joint rate has been in effect thirty days or longer, such higher joint rate may, until further notice from the Commission, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting and filing with the Commission one day in advance *a supplement to the tariff in which the joint rate so reduced appears*, which supplement shall show the reduced rate; shall bear notation that it is effective on less than statutory notice "by authority of Rule 28, Interstate Commerce Commission's Tariff Circular No. 16-A;" shall show on title page, or in connection with such item, by identifying references and I. C. C. numbers, the tariffs that contain the locals which make up the new joint rate.²⁰

¶ I. JOINT RATE GREATER OR LESS THAN SUM OF LOCALS.

Two or more connecting express companies may establish a joint rate only upon notice of thirty days or under special permission; provided, that until otherwise ordered by the Commission express companies may establish on one day's notice to the Commission and to the public, tariffs or tariff supplements naming joint rates over the lines of two or more express companies between points as to which no joint rates are in effect via their lines, provided that such joint rates, so established, do not in any way, manner, or extent, increase the rates or charges demanded from shippers. Tariffs or tariff supplements issued under this rule must bear notation: "Issued by authority of Rule 27, Interstate Commerce Commission's Tariff Circular, No. 16-A."²¹

¹⁹ See Note 11, *supra*.

²⁰ Rule 28, Tariff Circular 16-A.

²¹ Rule 27, Tariff Circular 16-A.

¶ J. RATES TO OR FROM NEW OFFICES.

An express company may establish, in the first instance, rates to or from newly opened offices of such company upon one day's notice to the Commission and the public. Statutory notice will be required as to all changes in, or additions to, the rates so filed in the first instance. Such tariffs must bear notation that they apply to newly opened offices to or from which no rates are in effect, and bear the notation: "Issued by authority of Rule 29, Interstate Commerce Commission's Tariff Circular, No. 16-A."²²

¶ K. RATES ON CARLOAD SHIPMENTS BETWEEN POINTS AS TO WHICH NO CARLOAD RATES ARE IN EFFECT.

Express companies may establish upon one day's notice to the Commission, and to the public, tariffs or supplements naming rates for carload shipments between points as to which no carload rates are in effect via their lines. Each tariff or supplement containing rates established under this permission must bear notation: "Issued by authority of Rule 30, Interstate Commerce Commission's Tariff Circular, No. 16-A."²³

§ 520. Rules and Regulations affecting Rates.

In all cases where a charge in addition to tariff rate is made for icing, lighterage, or switching, the express company shall either include such charge in the tariff or refer therein to I. C. C. number of tariff wherein such additional charge will be found.²⁴

§ 521. Different Kinds of Express Tariffs defined.

¶ A. LOCAL TARIFFS.

Local tariffs apply only to traffic between points on the lines of the issuing express company.

¶ B. JOINT TARIFFS.

Joint tariffs are those which contain or are made up from

²² See note 11, supra.

²³ Rule 30, Tariff Circular 16-A.

²⁴ Rule 10, Tariff Circular 16-A.

rates that extend over the lines of two or more carriers and that are made by agreement between such carriers.²⁵

§ 522. Tariffs must be printed.

All tariffs must be printed on hard calendered paper of good quality from type of size not less than 6-point full face. Stereotype, planograph, or other printing-press process may be used. Tariff schedules with the body of the tariff printed, as above provided, with the rates filled in with typewriter or ink, may be used for filing and posting.²⁶

§ 523. Form and Size of Express Tariffs.

All tariffs must be in book, sheet, or pamphlet form, and of size 9½ by 11½ inches.²⁷ Loose-leaf plan may be used; so that changes can be made by reprinting and inserting a single leaf; but if changes are so made, no other supplements to the same tariff may be issued.²⁸

§ 524. Information to be shown on Title-Page of Express Tariffs.

The Commission has ruled that the title-page of every express tariff shall show the following information:

¶ A. NAME OF EXPRESS COMPANY.

Name of issuing express company, express companies, or agent.²⁹

¶ B. I. C. C. NUMBER AND CANCELLATIONS.

I. C. C. number of tariff in bold type on upper right-hand corner, and immediately thereunder, in smaller type, the I. C. C. number or numbers of tariffs and supplements canceled thereby. If, however, the number of canceled tariffs is so large as to render it impracticable to thus enter them on title-page, they must be shown on following page; but specific reference to such list must be entered on title-page immediately under the number of the tariff. Serial numbers of express compa-

²⁵ Express Tariff Circular 16-A.

²⁶ Rule 1, Tariff Circular 16-A.

²⁷ Rule 2, Tariff Circular 16-A.

²⁸ Ibid.

²⁹ Rule 3, Tariff Circular 16-A.

nies may, if desired, be entered below the upper marginal line of title-page.³⁰

¶ C. KIND OF TARIFF.

Whether tariff is local or joint or a combination of same.³¹

¶ D. TERRITORY.

Whether merchandise, commodity, or a combination of both, and the territory or points from and to which the tariff applies, briefly stated.³²

¶ E. REFERENCE TO GOVERNING CLASSIFICATION AND EXCEPTION SHEETS.

Reference by name and I. C. C. number to the classification and exception sheets governing the tariff. Following form may be used: "Governed by the classification, I. C. C. No. ... and exceptions thereto I. C. C. No. ..., and supplements thereto and reissues thereof."³³

¶ F. DATES.

Date of issue and date effective. Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice.³⁴

¶ G. EXPIRATION NOTICE.

A provision in a tariff that the same, or any part thereof, will expire upon a given date, is not a guaranty that the tariff, or such part of it, will remain effective until that date. The Commission considers such expiration notices undesirable, as many complications have arisen through their being overlooked. Such provision, if used, must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in

³⁰ Rule 3, Tariff Circular 16-A.

³¹ Rule 3, Tariff Circular 16-A.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

lawful way. On such tariffs the term "Expires, unless sooner canceled, changed, or extended," must be used.⁸⁵

¶ H. STATUTORY NOTICE OR AUTHORITY FOR SHORTER NOTICE
MUST BE SHOWN.

The Act to Regulate Commerce requires that all changes in rates or in rules that affect rates, shall be filed with the Commission at least thirty days before the date upon which they are to become effective. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not the statutory notice has been given. The title-page of every tariff must show full thirty days' notice, or must bear a plain notation of the number and date of the permission, or the rule, or the decision of the Commission under which it is effective on less than statutory notice.⁸⁶

On every tariff or supplement that is issued on less than thirty days' notice by permission or order or regulation of the Commission, notation is required that it is issued under special permission or order "of the Interstate Commerce Commission, No. . . . of [date], or by authority of Rule, Tariff Circular [give current number]"⁸⁷

¶ I. NOTICE OF SUPPLEMENTS.

On the upper left-hand corner the words: "Only two supplements to this tariff may be in force at any time."⁸⁸

¶ J. OFFICER ISSUING.

Name, title, and address of officer by whom tariff is issued.⁸⁹

§ 525. Information that Express Tariffs shall contain.

The Commission has ruled that express tariffs in book or pamphlet form shall contain the following information, and in the order named:

⁸⁵ Rule 3, Tariff Circular 16-A.

⁸⁶ See note 3, supra.

⁸⁷ See note 29, supra.

⁸⁸ Ibid.

⁸⁹ Ibid.

¶ A. TABLE OF CONTENTS.

Table of contents, full and complete. Except that when tariff contains so small a volume of matter that its title-page or its arrangement plainly discloses its contents the table of contents may be omitted.⁴⁰

¶ B. PARTICIPATING EXPRESS COMPANIES OR CARRIERS.

Names of issuing express companies, including those for which joint agent issues under power of attorney, and names of carriers amenable to Act to Regulate Commerce participating under concurrence, both alphabetically arranged.⁴¹

¶ C. SHOW CONCURRENCE NUMBERS.

The form and number of power of attorney or concurrence by which each carrier is made party to the tariff must be shown.⁴²

¶ D. TARIFF MUST CONTAIN ALL RATES ON COMMODITIES INCLUDED IN TARIFF AND BETWEEN SAME POINTS.

A tariff on a single commodity, or a few commodities, shall contain all of that express company's commodity rates on such commodity or commodities applying from any point of origin named in the tariff to any point of destination named in the tariff.⁴³

¶ E. INDEX OF OFFICES.

Unless alphabetically arranged, a complete index of offices from which the tariff applies and an alphabetically arranged and complete index of offices to which the tariff applies, together with the names of States in which located.⁴⁴

¶ F. TERRITORIAL OR GROUP DESCRIPTIONS.

Traffic territorial or group descriptions may be used to designate points to or from which rates named in the tariff apply, provided a complete list of such points arranged by traffic territories or groups is printed in the tariff or specific

⁴⁰ Rule 4, Tariff Circular 16-A.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

reference is given to the I. C. C. number of the issue that contains such list. In this list the offices in each traffic territorial or group description shall be arranged alphabetically, or all of the offices in traffic territories or groups named in the tariff may be included in one alphabetical index, provided that points of origin and points of destination be shown separately, alphabetically, and the traffic territorial or group description in which they belong be shown opposite the several offices.⁴⁵

¶ G. REFERENCE MARKS AND ABBREVIATIONS.

Explanation of reference marks and technical abbreviations used in the tariff.⁴⁶

¶ H. LIST OF EXCEPTIONS.

List of exceptions, if any, to the classification governing the tariff which are not contained in exception sheets referred to on title-page.⁴⁷

¶ I. EXPLANATORY STATEMENTS.

Such explanatory statement in clear and explicit terms regarding the rates and rules contained in the tariff as may be necessary to remove all doubt as to their proper application.⁴⁸

¶ J. RULES GOVERNING THE TARIFF.

Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the rates named in the tariff shall be entered, except that a special rule applying to a particular rate shall be shown in connection with and on the same page with such rate.⁴⁹

¶ K. NO RULE SHALL AUTHORIZE SUBSTITUTING RATE FOUND IN ANY OTHER TARIFF.

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any rate named in

⁴⁵ Rule 4, Tariff Circular 16-A.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

the tariff a rate found in any other tariff; but a scale of rates or a table of distance rates may be included in the tariff together with the provision, "If the use of the scale rate or the mileage rate on page . . . of this tariff makes a less charge on any shipment than rates named herein such lower charge will apply."⁵⁰

¶ L. TARIFF RULES AND REGULATIONS FILED AND POSTED MAY BE REFERRED TO IN OTHER SCHEDULES GOVERNED THEREBY.

An express company or an agent may publish, under I. C. C. number, post, and file a tariff publication containing the rules and regulations which are to govern certain rate schedules, and such publication may be made a part of such rate schedules by the specific reference "Governed by rules and regulations shown in I. C. C. No. . . ."⁵¹

A rate schedule may in like manner refer to another schedule for the governing rules and regulations.

A schedule or a publication so referred to must be on file with the Commission and be posted at every place where a schedule that refers to it is posted.⁵²

¶ M. RATE TABLES.

The rates, explicitly stated, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated or ambiguous plans or terms must be avoided.⁵³

¶ N. ROUTES.

The different routes via which tariff applies may be shown, together with appropriate reference to application of rates. When a tariff specifies routing, the rates may not be applied via routes not specified. A tariff may show the routing ordinarily and customarily to be used, and may provide that, if from any cause shipments are sent via other junction points, but over the lines of parties to the tariff, the rates will apply.

⁵⁰ Rule 4, Tariff Circular 16-A.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

§ 526. Basing Tariffs.

A basing rate tariff to be used in computing through rates between points between which no specific through rate applies may be constructed in sections, each section containing an alphabetical list of the offices and the basing rates for an individual State.⁵⁴

Contemporaneous with issuance of supplement to such tariff and effective on the same date, any section applying to an individual State may be reissued. Such reissues must bear the I. C. C. number of the tariff of which it is a part; the name of the State to which it applies; the cancellation of superseded section, specifying its date and the effective date of the new section; but supplement issued contemporaneously with such reissued section may not contain any changes affecting the State to which the reissued section applies. Reissued sections under this rule will not be counted as supplements under the rule limiting the number of supplements to any tariff. Such tariff shall contain an index of the effective dates of its several sections, and such index must be kept up to date either by reissue or in supplement to the tariff.⁵⁵

§ 527. Joint Basing Transfer Tariffs.

Express companies shall print, post, and file alphabetical lists of the offices reached by connecting concurring express companies, arranged by States, and designating the transfer points at which through business may be transferred, together with the rates from such transfer points to the destination offices via the lines of such connecting concurring companies. These lists shall be known as "Joint Basing Transfer Tariffs," and shall include the transfer points by which through rates may be figured, and shall provide that the lowest charge that can be computed therefrom via any transfer point named therein shall be the through charge from point of origin to destination applicable via any transfer point named therein.⁵⁶

⁵⁴ Rule 5, Tariff Circular 16-A.

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

**§ 528. Limiting Use of Terms "Missouri River Points,"
"General Specials," etc.**

The terms "Missouri River points," "Puget Sound points," or similar terms shall not be used in any tariff for the purpose of indicating the points from or to which rates named therein apply unless a full list of such points is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list.

The term "general specials," or similar term, must not be used in any tariff for the purpose of indicating the articles to which the rates apply, unless a full list of the articles included in and covered by such term is printed in the tariff or specific reference is given to I. C. C. number of issue that contains such list.⁵⁷

§ 529. Commodity Rates must be Specific.

Commodity rates must be specific and must not be applied to analogous articles.⁵⁸

**§ 530. Commodity Rate the only Rate that can lawfully be
Used.**

In every instance where a commodity rate is named in a tariff upon a commodity and between specified points such commodity rate is the lawful rate and the only rate that can be used by the companies parties thereto, with relation to that traffic between those points, even though a merchandise rate or some combination may make lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic entirely out of the classification and out of the merchandise rates between the points to which such commodity rate applies, and the commodity rate so named is not modified by the provisions in the classification for extra valuation charges, limitation of liability, icing charges, or any variation of the commodity rate, unless the commodity tariff provides that classification rules will govern.

Classification and class rate tariffs shall contain the provi-

⁵⁷ Rule 6, Tariff Circular 16-A.

⁵⁸ Ibid.

sion that wherever commodity rates are named they remove the application of the classification scale or class rates to the same commodity and between the same points.⁵⁹

§ 531. Rates for Mixed Shipments.

Rates may be made for specified mixed shipments and will be the lawful rates for such mixtures, even though certain parts of the mixtures are covered by merchandise or commodity rates when shipped separately.⁶⁰

§ 532. Cancellation of Tariffs or Parts thereof.

¶ A. TARIFF OR SUPPLEMENT TO TARIFF SHALL SPECIFY CANCELLATIONS.

If a tariff or supplement to a tariff is issued which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state the portions of such other tariff which are thereby canceled, and such other tariff shall at the same time be correspondingly amended in the regular way. It will not be necessary to give on commodity tariff or supplement reference to merchandise rate tariffs that may be affected, nor to give on merchandise rate tariffs or supplements reference to commodity tariffs, except as otherwise provided.⁶¹

¶ B. CANCELLATION MUST BE BY AUTHORIZED AGENT OR BY EXPRESS COMPANY THAT ISSUED THE TARIFF CANCELED.

An agent who acts under power of attorney is fully authorized to act for the express companies that have named him their agent and attorney, and, therefore, it is permissible for him to cancel by his tariffs issues of such principals. A concurrence, however, does not confer authority upon either express company or agent to cancel tariffs of concurring express company and, therefore, tariffs issued under concurrences may not assume to cancel, or carry notation of cancellation of, tariffs of and issued by concurring express companies. Such

⁵⁹ Rule 7, Tariff Circular 16-A.

⁶⁰ Ibid.

⁶¹ Rule 8, Tariff Circular 16-A.

cancellations must be made by the express company that issued the tariff that is to be canceled.⁶²

¶ C. CANCELLATION NOTICES MUST BE BY SUPPLEMENT.

If a tariff is canceled with the purpose of canceling entirely the rates named therein, or when, through error or omission, a later issue failed to cancel the previous issue, and a tariff is canceled for the purpose of perfecting the records, the cancellation notice must not be given a new I. C. C. number, but must be issued as a supplement to the tariff which it cancels, even though such tariff may at the time have two effective supplements.⁶³

¶ D. CANCELLATION NOTICE SHALL SPECIFY WHERE RATES WILL THEREAFTER BE FOUND.

When a tariff or a commodity rate is canceled by supplement the cancellation notice must show where rate will thereafter be found, or what rate will thereafter apply. For example: "Rate in I. C. C. No. . . . will apply," or "Merchandise rates will apply," or "Combination rate will apply," or "No rates in effect."⁶⁴

If a tariff is canceled with the purpose of applying in lieu thereof the rates shown in some other tariff, the cancellation notice shall make a specific reference to the I. C. C. number of tariff in which such rates will thereafter be found. Cancellation of a tariff also cancels supplement to such tariff, if any in effect. If a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice printed in new tariff, as provided elsewhere.⁶⁵

§ 533. Amendments and Supplements to Tariffs.

¶ A. AMENDMENT AND SUPPLEMENT DEFINED AND FORM THEREOF.

A change in or addition to a tariff shall be known as an

⁶² Rule 8, Tariff Circular 16-A.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

amendment, and shall be issued in a supplement to the tariff and shall refer to the page or pages or item or items of the tariff which it amends.⁶⁶

¶ B. PARTICIPATING CARRIERS.

Supplement shall contain full list of participating carriers.⁶⁷

¶ C. SUPPLEMENT NUMBER AND CANCELLATIONS.

Supplements to a tariff shall be numbered consecutively as supplements to that tariff and not be given separate or new I. C. C. numbers. Each supplement shall specify the supplement or supplements which it cancels, and shall also show on title-page what supplements are in effect and that such effective supplements contain all changes. For example: "Supplement No. ... to I. C. C. No. ..." "Cancels Supplements Nos. ... and ..." "Supplements Nos. ... and ... are in effect and contain all changes." The term "cancels conflicting portions" must not be used.

An amended item must always be printed in supplements in its entirety as amended.⁶⁸

¶ D. SHOW EFFECTIVE DATE OF REISSUED ITEMS AND I. C. C. REFERENCE.

A tariff or a supplement which contains reissued items must not bear the notation, "effective at once, except as noted," but instead must bear the notation, "effective, except as noted in individual items." Example: "Issued Effective, except as noted in individual items." Reissued items must bear notation, "Effective [*date upon which item became effective*] in I. C. C. No. ...;" or "in Supplement No. ..., to I. C. C. No. ..." ⁶⁹

¶ E. NUMBER OF SUPPLEMENTS IN EFFECT AT ONE TIME.

There shall at no time be more than two supplements in effect to any tariff.⁷⁰

⁶⁶ Rule 9, Tariff Circular 16-A.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

¶ F. AMOUNT OF MATTER SUPPLEMENT MAY CONTAIN.

When the effective supplements to a tariff have in the aggregate attained the proportions of twenty-five (25) percent of the pages in the original tariff, with a minimum of two pages, it may be reissued before further amendments may be made.⁷¹

§ 534. Index of Express Tariffs.

¶ A. EXPRESS COMPANIES MUST PUBLISH COMPLETE INDEX OF THEIR TARIFFS.

Each express company shall publish under proper I. C. C. number, post, and file a complete index of tariffs which are in effect and to which it is a party.⁷²

¶ B. ARRANGEMENT OF INDEX.

Such index shall be prepared in sections as follows and shall show: (a) I. C. C. number; (b) express company's own number; (c) index number; (d) initials of issuing express company or agent; (e) issuing express company or agent's number; (f) character of tariff or description of the articles upon which it applies; (g) where tariff applies from; (h) where tariff applies to.⁷³

NOTE.—Items (b), (c), and (e) may be omitted. Items (f), (g), and (h) will be stated in concise general terms.

First section. A list of all the tariffs as to which the express company is an initial carrier. Commodity tariffs to be entered alphabetically under names of commodities or principal commodities. Tariffs applying to different groups of the same commodity must be grouped together; e. g., "Fruits," etc.⁷⁴

Following the specific commodity tariffs will be entered the general commodity tariffs and the merchandise tariffs. Under each of these heads the application of the tariffs will be described by alphabetical arrangement of the points or territory from or to which they apply, in either the "From"

⁷¹ Rule 9, Tariff Circular 16-A.

⁷² Rule 11, Tariff Circular 16-A.

⁷³ Ibid.

⁷⁴ Ibid.

or "To" or "Between" column. Tariffs applying between a certain office and other offices will be listed in alphabetical order of offices for which constructed.⁷⁵

Second section. List of all tariffs of other express companies to which the express company is a party, arranged under commodities or merchandise as prescribed in the first section.⁷⁶

¶ C. NOTATION ON TITLE-PAGE.

Each index must bear on its title page the notation "This index contains lists of tariff publications in effect on [*date of issue of the index*]."

Each supplement to index must bear on title page the notation "This supplement contains corrections to and as in effect on [*date of issue of the supplement*]."

The title page of index or of supplement must show the date of issue thereof, which must correspond to date shown in notations above, and must not bear any effective date. The rule requiring thirty days' notice does not apply to these indices and their supplements.⁷⁷

¶ D. REVISION AND SUPPLEMENTS.

If the express company so desires, lists of its division sheets, official circulars, etc., may appear in this publication. Supplements need not be included in indices.

If any changes are made, this index shall be corrected to date and be reissued each month, or supplement may be issued each month showing all changes and also what tariff, if any, shown in index is canceled or superseded by one shown in supplement, and index be reissued every six months. If supplements are used, they must be constructed in accord with specifications as to construction of index, excepting the "Additions" to and "Eliminations" from the index will be arranged under those respective heads; and each supplement must cancel preceding supplement and bring forward all changes.⁷⁸

⁷⁵ Rule 9, Tariff Circular 16-A.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

§ 535. Tariffs to or from Season or Summer Offices.

Tariffs or rates applying to or from offices at which business is transacted only during certain portions of the year, or tariffs applying over water routes during season of navigation only, shall remain in force until changed in the manner provided by these regulations, and it will not be necessary to refile with the Commission the rates in force to or from such office or over such route, temporarily closed, when it is reopened. Three days' previous notice of the opening and closing of any summer or season office or water route must be filed with the Commission and duly posted, in supplement to the tariff. All offices where rates are temporarily in effect shall be designated in tariffs as "summer" or "season" offices.⁷⁹

§ 536. All State or other Rates used for Interstate Shipments must be Posted and Filed.

Rates for through shipments are often made by adding together two or more rates. All State or other rates used in combination for interstate shipments must be posted at offices and filed with the Commission, and can only be changed as to such traffic in accordance with the terms of the Act.⁸⁰

§ 537. All Local Tariffs should have I. C. C. Numbers and be Posted and Filed.

The Commission believes it proper that all local tariffs be given I. C. C. numbers and be posted and filed with the Commission in manner prescribed in the Act.⁸⁰

§ 538. Receipt by and Filing of Tariffs with Commission does not Relieve Express Companies from Liability for Violation of Act or Regulations thereunder.

The law affirmatively imposes upon each express company the duty of filing with the Commission all of its tariffs and amendments thereto, as prescribed in the law or in any rule

⁷⁹ Rule 12, Tariff Circular 16-A.

⁸⁰ See note 1, supra.

relative thereto which may be announced by the Commission, under penalty for failure so to do, or for using any rate which is not contained in its lawfully published and filed tariffs. The Commission will give such consistent assistance as it can in this respect, but the fact that receipt of a tariff, or supplement to a tariff, is acknowledged by the Commission, or the fact that a tariff, or supplement to a tariff, is in the files of the Commission, will not serve or operate to excuse the express company from responsibility or liability for any violation of the law, or of any ruling lawfully made thereunder, which may have occurred in connection with the construction or filing of such tariff or supplement.⁸¹

§ 539. Rejected Schedules.

When a schedule is rejected by the Commission as unlawful, the records so show and, therefore, such schedule should not thereafter be referred to as canceled, amended, or otherwise except to note on publication that is issued in lieu of such rejected schedule "In lieu of rejected by Commission," nor should the I. C. C. number or supplement number which it bears be again used.⁸²

§ 540. Rates Prescribed in Commission's Decisions must be Promulgated in Tariffs.

Rates prescribed by the Commission in its decisions and orders after hearings upon formal complaints and accepted by defendants or affirmed by a Court shall, in every instance, be promulgated by the express companies against which such orders are entered, in duly published, filed, and posted tariffs, or supplements to tariffs.

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon five days' notice to the Commission and to the public, and if made effective on less than statutory notice, either under this rule or under special authority granted in the order of the case,

⁸¹ See note 3, *supra*.

⁸² *Ibid*.

shall bear on its title page notation "In compliance with order of Interstate Commerce Commission in case No."⁸³

§ 541. Circulars announcing Compliance with Orders of Court.

Circulars announcing or explaining the attitude and course of express companies under injunction of a Court, relating to tariff rates or regulations, must not be issued as supplements to tariffs nor given I. C. C. numbers unless they are issued on statutory notice or under special permission from the Commission for shorter time. The Commission will, however, be pleased to have copies of such circulars and the information therein contained.⁸⁴

§ 542. Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required.

Each express company files tariffs under I. C. C. numbers, which are presumed to be used consecutively. Occasionally a tariff or supplement is received which does not bear I. C. C. number next in numerical order to that borne by the one last filed. This is sometimes occasioned by the missing number having been assigned to a tariff that is in course of preparation. Request is made that in so far as is possible express companies will file tariffs and supplements in consecutive numerical order of I. C. C. numbers. If from any cause this is not done in any instance, the tariff or supplement that is filed with an I. C. C. number that is not consecutive with the last number filed must be accompanied by a memorandum explaining as to the missing number or numbers.⁸⁵

§ 543. Agents Authorized to issue Tariffs, Classifications, Exception Sheets and Supplements thereto.

¶ A. NOTICE OF AUTHORIZATION OR ACCEPTANCE MUST BE FILED.

If an express company authorizes an agent to file its tariffs

⁸³ See note 3, supra.

⁸⁴ Ibid.

⁸⁵ Ibid.

or classifications and exception sheets and supplements thereto, or certain of them, official notice of such authorization and of acceptance of responsibility by the express company for his acts, in form as hereinafter specified, must be filed with the Commission.⁸⁶

¶ B. FORM OF APPOINTMENT OF AGENT TO FILE TARIFFS, CLASSIFICATIONS, AND EXCEPTION SHEETS AND SUPPLEMENTS THERETO.

The following form, on paper 8 by 10½ inches in size, will be used in giving authority to an agent to file for the express company giving the authority tariffs and supplements thereto. Such authority must not be given to an association or bureau, and it may not contain authority to delegate to another power thereby conferred.⁸⁷

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of express company in full.*]

[*Date*], ...

Form EX1—No. ...

Know all men by these presents:

That the [*name of express company*] has made, constituted, and appointed, and by these presents does make, constitute, and appoint [*name of person appointed*] its true and lawful attorney and agent for the said company and in its name, place and stead to file tariffs, classifications, and exception sheets and supplements thereto, as required of common carriers by the Act to Regulate Commerce and by regulations established by the Interstate Commerce Commission thereunder for the period of time, the traffic, and the territory now herein named:

.....

And the said [*name of express company*] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its president and to be duly attested under its corporate seal by its secretary, at, in the State of,

⁸⁶ See note 1, *supra*.

⁸⁷ Rule 16, Tariff Circular 16-A.

on this day of, in the year of our Lord nineteen hundred and

The [name of express company.]

By
Its President.

Attest:

.....
Secretary.

[Corporate Seal.]

*Original Form to be Filed with Commission and Duplicate
Furnished Agent.*

The express company issuing this form will file the original with the Commission and will furnish duplicate to the agent to whom power of attorney is given.⁸⁸

¶ C. AUTHORIZATIONS FOR AGENT AND CONCURRENCES IN HIS
TARIFFS MUST BE ON FILE.

If two or more express companies appoint the same person as agent for the filing of tariffs or classifications and supplements thereto, each of them will be required to file with the Commission power of attorney in form prescribed appointing him their agent; and the concurrence of every other carrier amenable to the Act to Regulate Commerce, participating in any tariff or classification or supplement thereto which is filed by him must be on file with the Commission or accompany the tariff.⁸⁹

¶ D. AUTHORITY TO AGENT MAY BE REVOKED OR TRANSFERRED.

Authority given as stated above may be revoked by an express company upon thirty days' official notice to the Commission, or at any time may be transferred to another agent by filing with the Commission notice of such transfer, accompanied by full-form authorization for the newly named agent.⁹⁰

¶ E. JOINT AGENT WILL USE HIS OWN I. C. C. SERIAL NUMBER.

Such joint agent duly authorized to act for several express companies must file joint tariffs, or classifications, or exception sheets under I. C. C. serial numbers of his own.⁹¹

⁸⁸ Rule 16, Tariff Circular 16-A.

⁸⁹ See note 1, supra.

⁹⁰ Ibid.

⁹¹ Ibid.

¶ F. TARIFFS ISSUED BY AN EXPRESS COMPANY UNDER CONCURRENCES WILL BE FILED BY IT FOR ALL CONCURRING.

Tariffs issued by an express company under its I. C. C. numbers may include, under proper concurrences, shown therein, rates via to and from points on other express companies' lines and concurring express companies may use such tariffs for posting at their offices. Such tariffs must be filed by the issuing express company and such filing will constitute filing for all lawfully concurring carriers.⁹²

¶ G. SEND COPIES OF JOINT PUBLICATION TO EVERY PARTICIPANT THEREIN.

The agent or express company that issues a joint tariff publication shall at once send copies thereof to each and every carrier that is named as party thereto.⁹³

¶ H. EXPRESS COMPANY MUST NOT PUBLISH RATES CONFLICTING WITH OR DUPLICATING RATES PUBLISHED BY ITS AGENT.

An express company that grants authority to an agent or to another express company to publish and file certain of its rates must not in its own publications publish rates that duplicate or conflict with those which are published by such authorized agent or other express company.⁹⁴

¶ I. EXPRESS COMPANY MAY GRANT AUTHORITY TO JOINT AGENT TO PUBLISH CLASSIFICATIONS, EXCEPTION SHEETS AND SUPPLEMENTS THERETO.

An express company may grant to a joint agent authority to publish and file for it classifications and supplements thereto and exceptions to the classifications; or, such exceptions may be published by the express company in its own issues, either as part of individual tariffs or in a publication that is given an I. C. C. number, that is filed and posted as required, and that is devoted to such exceptions. Such exceptions and changes therein may be made only on statutory notice or under special permission for shorter time.

⁹² Rule 16, Tariff Circular 16-A.

⁹³ Ibid.

⁹⁴ Ibid.

In so far as is reasonably practicable, exceptions should be included in the tariff which they affect.⁹⁵

¶ J. I. C. C. NUMBER OF CLASSIFICATION.

A joint agent to whom express companies have extended authority under power of attorney to publish and file classifications and supplements thereto must issue them under his own I. C. C. numbers.⁹⁶

¶ K. LIST OF PARTICIPATING EXPRESS COMPANIES.

The agent must show in the classification a list of the express companies for which he acts under power of attorney, giving as to each the EX1⁹⁷ number of such authority.

A full list of participating express companies shall be shown in supplements.⁹⁸

¶ L. FILING CLASSIFICATION ISSUED BY JOINT AGENT.

Such agent must file the classification and supplements thereto on behalf of all of the express companies that have so authorized him to act for them; and such express companies will not file for themselves the classification or supplements thereto.

The provisions of the law as to statutory notice must be observed in the issuance of supplements or reissue of the classifications.⁹⁹

¶ M. IF EXPRESS COMPANY DOES NOT AUTHORIZE AGENT TO FILE CLASSIFICATION, IT IS BOUND TO STATUTORY NOTICE.

If an express company fails to authorize an agent to file the classification for it and undertakes to file it for itself, it is bound by the terms of the law as to notice of change and date of filing, both as to the classification and each supplement thereto.¹⁰⁰

⁹⁵ Rule 15, Tariff Circular 16-A.

⁹⁶ Ibid.

⁹⁷ EX1, EX2, etc., refer to forms of concurrences, powers of attorney, etc., to be filed with the Commission as treated of at length in this chapter.

⁹⁸ See note 95, supra.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¶ N. POWER OF ATTORNEY.

In giving power of attorney to agent for purpose of issuing classification, the form EX1 may be modified by striking out the word "tariff," and, if desired, the words "and exception sheets."¹⁰¹

¶ O. CONCURRENCE.

If an express company has given another express company concurrence EX4, under which it concurs in the classification which that other express company or its agent may make and file, the express company to which that concurrence is given may exercise the authority by its lawfully appointed agent, and the express company which gave the authority be shown in the publication as participant under the form and number of its concurrence.¹⁰²

§ 544. Concurrence by Express Companies in Tariffs Issued and Filed by another Express Company or its Agent.

¶ A. SIZE OF PAPER.

All concurrences must be on paper 8 by 10½ inches in size.¹⁰³

¶ B. FORM OF CONCURRENCE IN A TARIFF THAT IS ISSUED AND FILED BY ANOTHER EXPRESS COMPANY OR ITS AGENT, AND TO WHICH THE EXPRESS COMPANY GIVING CONCURRENCE IS A PARTY.

The following form will be used in giving concurrence in a tariff that is issued and filed by another express company or its agent and to which the express company giving concurrence is a party. If given to continue until revoked, it will serve as continuing concurrence in the tariff described in the concurrence and all supplements to and reissues thereof. If provision for concurrence to continue until revoked is stricken

¹⁰¹ See note 95, supra.

¹⁰² Ibid.

¹⁰³ See note 87, supra.

out, a new concurrence will be required with each supplement or reissue.¹⁰⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date] . . . , ...

Form EX2—No. . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of the rate schedule described below, together with supplements thereto and reissues thereof which the named issuing express company or its agent may make and file, and hereby makes itself a party thereto and bound thereby, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

Title and number: [Here give exact description of title of schedule, including number and name of series.]

Date of issue:

Date effective:

Issued by { [Official.]
 [Company.]

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Concurrence Accompanying Tariff.

This form will be filed with the Commission by the express company or agent who files the tariff and will accompany the tariff.¹⁰⁵

¶ C. FORM OF CONCURRENCE GIVEN BY AN EXPRESS COMPANY TO EMBRACE ALL TARIFFS ISSUED BY ANOTHER EXPRESS COMPANY OR ITS AGENT IN WHICH CONCURRING EXPRESS COMPANY IS SHOWN AS A PARTICIPATING INTERMEDIATE OR TERMINAL LINE.

Concurrence may be given by an express company to embrace all tariffs issued by another express company or its agent in which the concurring express company is shown as a participating intermediate or delivering line, after the following form:¹⁰⁶

¹⁰⁴ Rule 17, Tariff Circular 16-A.

¹⁰⁵ Ibid.

¹⁰⁶ Rule 18, Tariff Circular 16-A.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date] , ...

Form EX3—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [name of express company] or its agent may make and file, in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line and to, but not from, points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

*Original Form to be Filed with the Commission and Duplicate
Furnished Express Company.*

The express company issuing this form will file the original with the Commission and will furnish duplicate to the express company to which concurrence is given. This form must not be qualified in any way except to show what agents have been given power of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.¹⁰⁷

¶ D. FORM OF CONCURRENCE GIVEN BY AN EXPRESS COMPANY
IN TARIFFS ISSUED BY ANOTHER EXPRESS COMPANY OR
ITS AGENT APPLYING RATES TO OR FROM ITS OFFICES OR
VIA ITS LINES ON CERTAIN DESCRIBED TRAFFIC OR BE-
TWEEN CERTAIN DESCRIBED POINTS OR TERRITORIES.

Concurrence may be given by an express company in tariffs issued by another express company or its agent applying rates to or from its offices or via its lines, on certain described traffic or between certain described points or territories, after the following form, modified as may be necessary to confer exactly the authority intended to be granted. For granting authority to publish and file rates to and from and via its lines, and not

¹⁰⁷ Rule 18, Tariff Circular 16-A.

otherwise qualified, express company will use concurrence form EX5 or EX7.¹⁰⁸

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date] . . . , . . .

Form EX4—No. . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [name of express company] or its agent may make and file, and in which this company is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon . . . ; or between . . . and . . . ; or from . . . to . . . ; or via . . . ; until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

*Original Form to be Filed with the Commission and Duplicate
Furnished Express Company.*

The express company issuing this form will file the original with the Commission and will furnish duplicate to the express company to which concurrence is given.¹⁰⁹

¶ E. FORM OF CONCURRENCE BY AN EXPRESS COMPANY IN TARIFFS ISSUED BY ANOTHER EXPRESS COMPANY OR ITS AGENT APPLYING RATES TO AND FROM ITS OFFICES AND VIA ITS LINES.

Concurrence may be given by an express company in tariffs issued by another express company or its agent applying *to and from* its offices and via its lines and after the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date] . . . , . . .

Form EX5—No. . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and

¹⁰⁸ Rule 19, Tariff Circular 16-A.

¹⁰⁹ Ibid.

concurs in the publication and filing of any rate schedule or supplement thereto which the [name of express company] or its agent may make and file, and in which this company is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying to and from offices on its lines, and via its lines, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

*Original Form to be Filed with the Commission and Duplicate
Furnished Express Company.*

The express company issuing this form will file the original with the Commission and will furnish duplicate to the express company to which concurrence is given. This form must not be qualified in any way, unless to show what agents have been given powers of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.¹¹⁰

¶ F. FORM OF CONCURRENCE GIVEN BY TWO OR MORE EXPRESS
COMPANIES IN TARIFFS ISSUED BY THEIR JOINT AGENT.

If two or more express companies appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form EX1, concurrence in tariffs issued by him under such authority may be in the following form:¹¹¹

(A)

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

Form EX6—No. ...

[Date]

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [here give list of all express companies for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule

¹¹⁰ Rule 20, Tariff Circular 16-A.

¹¹¹ Rule 21, Tariff Circular 16-A.

contains rates applying via its line, and to *but not from* points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express companies to which this concurrence is given, or of their agent and attorney herein named.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Filing.

The express company issuing this form will file the original with the Commission and will furnish duplicate to each of the express companies named in the concurrence, or, if each of those express companies has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every express company represented by him.¹¹²

(B)

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date], ...

Form EX7—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [here give list of all express companies for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to and from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express companies to which this concurrence is given, or of their agent and attorney herein named.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Filing.

The express company issuing this form will file the original with the Commission and will furnish duplicate to each of the express companies named in the concurrence, or, if each of those express companies has given said agent power of attorney to receive for it concurrences, original will be filed with

¹¹² Rule 21, Tariff Circular 16-A.

the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every express company represented by him.¹¹³

¶ G. FORM OF CONCURRENCE GIVEN BY TWO OR MORE EXPRESS COMPANIES IN TARIFFS ISSUED BY THEIR JOINT AGENT APPLYING TO OR FROM CERTAIN POINTS OR TERRITORIES.

If two or more express companies appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form EX1, concurrence in tariffs issued by him under such authority applying to or from certain points or territory may be issued in the following form, modified as may be necessary to confer exactly the authority intended to be granted.¹¹⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of express company in full.*]

[*Date*] . . . , . . .

Form EX8—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of express company*] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [*here give list of all express companies for which the agent has powers of attorney*], or either or any of them, may make and file through their agent and attorney [*name of agent*], and in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon . . . ; or between . . . and . . . ; or from . . . to . . . ; or from . . . to points on or reached via its line; or from points on or via its line to . . . until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express companies to which this concurrence is given, or of their agent and attorney herein named.

[*Name of express company.*]

By [*Name of officer.*]

[*Title of officer.*]

Filing.

The express company issuing this form will file the original with the Commission and will furnish duplicate to each of the express companies named in the concurrence, or, if each of those express companies has given said agent power of at-

¹¹³ Rule 22, Tariff Circular 16-A.

¹¹⁴ *Ibid.*

torney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every express company represented by him.

NOTE.—Concurrence, form EX2, applies to individual publication named therein. Concurrence, form EX3 or EX6, confers authority to publish and file rates to, but not from, offices on line of concurring express company, and via its lines. Concurrence, form EX5 or EX7, confers authority to publish and file rates to and from offices on line of concurring express company, and via its lines. Forms EX3, EX5, EX6, and EX7 are not to be modified except as specified in the rules. The use of these several forms as provided will therefore show by the form number just what authority has been given, except when form EX4 or EX8 is used, these forms being provided for instances which the other forms do not exactly fit.

¶ H. NUMBERS OF CONCURRENCES AND AUTHORIZATIONS.

Each express company will give authorizations and concurrences serial numbers, beginning with No. 1 in each series, as indicated by forms, and continuing in consecutive numbers as to each series, and keeping these numbers separate and apart from the I. C. C. numbers of tariffs.¹¹⁵

¶ I. PRINTING AND USE OF AUTHORIZATIONS AND CONCURRENCES.

It is suggested that for convenience in reference and filing, the powers of attorney and concurrences be printed in triplicate, consisting of a "stub," to be retained by issuing express company, an "original," to be furnished to the agent to whom power of attorney is given, or the express company to which concurrence is given.¹¹⁶

¶ J. REVOCATION EFFECTIVE.

Notice of revocation of a concurrence will become effective forty days from date upon which such notice is filed with the Commission and served upon the express company to which such concurrence was given.¹¹⁷

¶ K. CONFLICTING AUTHORITY TO BE AVOIDED.

In giving concurrences care must be taken to avoid proba-

¹¹⁵ Rule 24, Tariff Circular 16-A.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

bility of two or more agents or express companies naming conflicting rates or rules.¹¹⁸

¶ L. EXPRESS COMPANY ISSUING AUTHORITY OR CONCURRENCE IS NOT RELIEVED FROM DUTY OF POSTING TARIFFS.

The granting of authority to issue tariffs under power of attorney, or concurrence, does not relieve the express company, conferring the authority, from the necessity of complying with the law with regard to posting tariffs. It may use tariffs issued under its authority for that purpose.¹¹⁹

§ 545. Letter of Transmittal accompanying Tariffs Filed with the Commission.

All tariffs that are filed with the Commission will be accompanied by a letter of transmittal, on paper 8 by 10½ inches in size, and to the following effect:¹²⁰

[Name of express company in full.]

[Date], ...

Advice No.

To the Interstate Commerce Commission,

Washington, D. C.:

Accompanying schedule is sent you for filing, in compliance with the requirements of the Act to Regulate Commerce, issued by Express Company, and bearing

I. C. C. No.

Supp. No. to I. C. C. No.

Effective, 191...;

and is concurred in by all express companies named therein as participants, under continuing concurrences or authorizations now on file with the Interstate Commerce Commission, except the following-named express companies, whose concurrences are attached hereto:

.....

[Signature of filing agent.]

A separate letter may accompany each schedule, or the form may be modified to provide for filing under one letter as many schedules as can conveniently be entered.¹²¹

NOTE.—If receipt for accompanying schedule is desired, the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned as receipt.¹²²

¹¹⁸ Rule 24, Tariff Circular 16-A.

¹¹⁹ Ibid.

¹²⁰ Rule 25, Tariff Circular 16-A.

¹²¹ Ibid.

¹²² Ibid.

§ 546. Withdrawal of Filed Tariffs not permitted.

See *Section 488, ante*.

§ 547. Tariffs covering Export and Import Traffic.

See *Section 506, ante*.

§ 548. Responsibility of Express Companies under Tariffs.

See *Section 490, ante*.

§ 549. Maxima Rates not Specific Rates.

See *Section 507, ante*.

CHAPTER XXXII.

PASSENGER FARES, TICKETS, AND SERVICES.

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550. Definitions.

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552. Legality of Higher Fare between Two Points in One Direction than in the Opposite Direction.

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- 579. Established Passenger Fares must be observed.
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- 588. A Carrier must publish Fares and offer to the Public Railroad Tickets Independent of Omnibus Arrangements.
- 589. Sale of Tickets after Departure of Last Train on Final Selling Date.

§ 550. Definitions.

The term "joint fare" is construed to mean a fare that extends over the lines of two or more carriers and that is made by joint arrangement or agreement between such carriers.¹

§ 551. Passenger Fares must be Just and Reasonable.

The Act to Regulate Commerce provides that all charges made for any service rendered or to be rendered in the transportation of passengers or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.²

§ 552. Legality of Higher Fare between Two Points in One Direction than in the Opposite Direction.

It is not a violation of law to charge more in one direction on certain trains than is charged in the other direction on all trains between the same points.³ The two rates have no necessary connection or relation, and the fact that a rate over a

¹ Tariff Circular 17-A.

² Act to Regulate Commerce. Section 1.

³ *Hewins v. N. Y. N. H. & H. Rd. Co.* (1904), 10 I. C. C. R. 221, citing *MacLoon v. B. & M. R. R. Co. et al.* (1903), 9 I. C. C. R. 642, and *Duncan v. A. T. & S. F. Ry. Co. et al.* (1893), 3 I. C. R. 256; 4 I. C. R. 385, 6 I. C. C. R. 85.

road or line in one direction is materially higher than the rate on the same class of traffic over the same road or line and between the same points in the opposite direction does not, as in case of hauls over the same line, in the same direction, establish *prima facie* the unreasonableness of the higher rate.⁴

§ 553. Through Tickets when no Joint Fares apply.

A carrier may apply to through tickets, fares to or from stations to or from which no joint fare is published by using lawfully published bases, locals, or proportionals in connection with other lawfully published tariffs.⁵

§ 554. Through Fare higher than Sum of Locals Prima Facie Unreasonable.

The Commission has issued the following ruling:⁶

“Many informal complaints are received in connection with regularly established through fares which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a fare except after full hearing upon formal complaint. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider the through fare which is higher than the sum of the locals between the same points as *prima facie* unreasonable and that the burden of proof would be upon the carrier to defend such higher through fare.”

§ 555. Through Interstate Passenger Fare Higher than the Sum of Local State Fares.

While under ordinary circumstances the through interstate passenger fare should not exceed the sum of the local State fares, there is no requirement of the Act to Regulate Commerce to this effect.⁷

⁴ MacLoon v. B. & M. R. R. Co. et al. (1903), 9 I. C. C. R. 642, citing Duncan v. A. T. & S. F. Ry. Co. et al. (1893), 3 I. C. R. 256, 4 I. C. R. 385, 6 I. C. C. R. 85.

⁵ Rule 36, Tariff Circular 15-A.

⁶ Rule 56, Tariff Circular 17-A.

⁷ Artz v. Seaboard Air Line Ry. (1905), 11 I. C. C. R. 458, citing

Where an interstate passenger fare which is in excess of the local State fares is alleged to be unreasonable, the presumption is that the fares established by State authority are reasonable, and the burden of proof to show the contrary is on the railroad company.⁸

§ 556. Right of Passenger to use Two Local State Fares instead of the Published Through Rate on Interstate Journey.

It is certainly true that if a railroad company publish a joint through rate between two points they cannot contract to transport the passenger between those points for a less sum than the published schedule.⁹ However it may well happen that the use of two local State rates may yield a lower charge than the published through interstate rate; and the Commission has held that such local rates may, under the present law, be properly used. In deciding the case of *Kurtz v. Pennsylvania Co. et al.*,¹⁰ the Commission said:

“Let us assume that the through rate from Charleston to Savannah established by the Atlantic Coast Line was \$6, while the rate from Charleston to the State line was \$3, and from the State line to Savannah \$2. It is apparent that if a passenger applied to the railroad company at Charleston for a ticket to Savannah, that company must sell him a through ticket for \$6, and would have no right to sell two local tickets for \$5; for that would be an evasion of its published tariff rates. Upon the other hand, this Commission has stated in its administrative rulings, and now repeats, that the passenger may properly pay his fare from Charleston to the State line and again from the State line to Savannah, although he there—
Railroad & Warehouse Commissioners v. Eureka Springs Ry. Co., 7 I. C. C. R. 69; Savannah Bureau of Freight & Transp. v. Charleston & S. Ry. Co., 7 I. C. C. R. 601.

⁸ Brabham et al. v. A. C. L. Rd. Co. (1905), 11 I. C. C. R. 464, citing Railroad & W. Comms. v. Eureka Springs Ry. Co., 7 I. C. C. R. 69; Savannah Bureau of Freight & Transp. v. C. & S. Ry. Co., 7 I. C. C. R. 601; Artz v. S. A. L. Ry., 11 I. C. C. R. 458.

⁹ Kurtz v. Pa. Co. et al. (1909), 16 I. C. C. R. 410.

¹⁰ Ibid.

by obtains through transportation between these points for less than the published through rate, and although he does so, knowing that he is to go from Charleston to Savannah, and deliberately seeking this means of obtaining transportation at less than the through rate.

“The reason for this is that not the intent of the parties but the actual transaction must be regarded, as was held by the United States Supreme Court in *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*,¹¹ involving the transportation of a carload of grain from a point in North Dakota to a point in Texas, at a rate from the point of origin to Texarkana and a rate from Texarkana to destination, which, when combined, were less than the through rate. The Charleston & Savannah Railroad Co. sells to all the world tickets from Charleston to the State line for \$3, and again from the State line to Savannah for \$2. A passenger may purchase his ticket to the State line, and when he arrives there that contract of transportation is at an end. He now purchases another ticket from the State line to Savannah and a new contract of transportation begins. If the regulations of the railroad company permit it, he may, instead of purchasing a ticket, pay his cash fare upon the train, to the same effect. He has, indeed, secured through transportation for less than the through rate; but he has done so by putting together two local transportations at the local rates.

“Congress might undoubtedly say that this shall not be done, but up to the present time has not so declared.”

§ 557. Combination of Joint Fare to Common Point and Local Fare Beyond.

¶ A. COMBINATION OF JOINT THROUGH AND LOCAL FARES.

In order to secure uniformity in practice and understandings and to remove the cause of many complaints, the Commission decides that when a joint through fare is the same to two or more points and fare on through passenger to local

¹¹ *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S. 403, 51 L. ed. 540, 27 Sup. Ct. 360.

station to which no specific joint through fare applies is made up by combination of such joint through fare to common points and local fare beyond, the fare for through passenger must be determined by calculating the joint through fare to the point from which the lower local fare applies to point of destination and adding thereto such local fare. For example: Joint through tariff names the same fares from certain eastern points to Chicago and Milwaukee. If passenger is destined to a point to which the local fare is less from Milwaukee than from Chicago, the fare applied should be the joint through fare to Milwaukee plus the local fare from Milwaukee to destination, and unless the lines of delivering carrier reach both Chicago and Milwaukee the passenger should move via Milwaukee. If the local fare from Chicago to point of destination is lower than from Milwaukee, the fare should be the joint through fare to Chicago plus the local fare from Chicago to destination, and unless the lines of delivering carrier reach both Milwaukee and Chicago the passenger should move via Chicago.¹²

¶ B. FARES MUST BE THOSE IN EFFECT OVER ROUTES BY WHICH
PASSENGER MOVES.

Fares for outbound through movements from such local stations and under like circumstances must be applied on the same basis where the joint through fares are the same from two or more points. This does not authorize any carrier to apply to transportation over its lines any fare except those stated in its own lawfully published tariffs or in the lawfully published joint tariffs in which it has concurred. If a carrier desires to "meet the rate" of a competitor, it must do so by lawfully including in its own tariffs such specific fares, proportional or otherwise, as may be necessary so to do.¹³

§ 558. Canadian Fares.

A Canadian carrier having joint through fares from a point in the United States to points on its own line may not depart from those fares by the device of placing an agent at such

¹² Rule 215, Con. Rul. Bul. No. 4 (March 18, 1907).

¹³ Ibid.

point in the United States with authority to sell tickets from the first station on its line north of the Canadian boundary to other points on its line in Canada at the rate of one cent a mile, "to be sold only to such persons as produce a certificate of the immigration agent of the Canadian Government." Besides being a device, tickets so limited to particular persons operate as a discrimination. But in the absence of such joint through fares from a point in the United States to points on its own lines this Commission has no jurisdiction over the fares actually charged and collected for the separate transportation between points in Canada.¹⁴

§ 559. Through Passenger Fares from Points in the United States to Foreign Countries.

Where a carrier publishes through passenger fares to or from a foreign country, if the inland portion of such fares is different from the carrier's domestic fares, and if such inland proportionals are offered only in connection with travel to or from such foreign country, it is entirely proper and necessary that the inland carrier shall require evidence of the steamer passage having been paid for before granting to any person its inland proportional fare which its tariff offers in connection with such journey; and to note on separate tickets that may be issued for the inland and the ocean portions of such trip cross references to the other portions of such tickets, and to require satisfactory evidence to be presented to the conductor in order to make valid such inland proportional tickets.¹⁵

§ 560. Requirement that Passenger shall purchase Ticket.

When a railroad company makes a reduction from regular passenger fares which are not found unreasonable, it may lawfully require that a person desiring to avail himself of such reduction shall purchase a ticket, and that all persons not holding such special reduction rate ticket shall pay the reasonable ordinary fare.¹⁶

¹⁴ Rule 24, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

¹⁵ Rule 71, Tariff Circular 17-A.

¹⁶ *Cist v. M. C. Rd. Co.* (1904), 10 I. C. C. R. 217.

Where a railroad company published on its public tariff schedules filed and posted as required by the Act to Regulate Commerce, that the conductor should collect fare on trains from passengers without tickets by adding 25 cents to single-trip rates. *Held*, That it was not unjust discrimination against the complainant to exact this addition from him.¹⁷

§ 561. Baggage of Passengers.

¶ A. DUTY OF CARRIERS TO PRESCRIBE REASONABLE REGULATIONS GOVERNING BAGGAGE.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) makes it the duty of all common carriers subject to its provisions to establish, observe and enforce just and reasonable regulations and practices affecting the carrying of personal, sample and excess baggage.

¶ B. DISCRIMINATION IN HANDLING BAGGAGE.

In the case of *Herbeck-Demer Co. v. B. & O. Rd. Co. et al.*,¹⁸ the complainant urged that most passengers travel with only such baggage as they take into the car with them; that when a railroad charges the same amount for carrying a passenger without baggage and a passenger and his trunk weighing 150 pounds, it has performed a greater service for the second person than for the first and has therefore discriminated in favor of that passenger. The Commission held that it is certainly true that the service performed by the railway for the passenger with the trunk is greater than that performed for the passenger without baggage and that so is the service performed in transporting a passenger who weighs 300 pounds greater than that performed in carrying one who weighs but 100 pounds. That the Act to Regulate Commerce does not forbid all discrimination, but only that which is *undue*, and that such discrimination as may be involved in the carrying

¹⁷ *Sidman v. R. & D. Rd. Co.* (1890), 3 I. C. C. R. 512; 2 I. C. R. 766.

¹⁸ *Herbeck-Demer Co. v. B. & O. R. Co. et al.* (1909), 17 I. C. C. R. 88.

of the personal baggage of a passenger without extra charge is not undue and therefore that the practice is not unlawful. That a railroad company may properly carry for one charge the passenger and his personal baggage; and that it may, for its own convenience and for the convenience of the traveling public, provide a separate car for the transportation of the baggage, and that it may limit the amount of baggage to be carried free and make a charge for the excess.

§ 562. Mileage, Excursion and Commutation Passenger Tickets.

¶ A. NATURE OF SUCH TICKETS.

The **mileage ticket** is one form of a reduced rate ticket which had a well-understood meaning before the passage of the Act to Regulate Commerce.¹⁹ The most usual form of mileage tickets is the one-thousand-mile ticket; but the custom has been to issue them in other and various forms, and they may be issued for any number of miles.²⁰ One coupon is detached by the conductor for each mile traveled, and fractions of a mile are computed as a mile. The distances are based upon mileage tables issued by the carrier.

Commutation tickets are commonly understood to be tickets sold for a gross sum at reduced rates for a number of rides between points.²¹ The Federal Court has defined a commutation ticket to be a ticket for one passenger, good for more than one ride, or more than one passenger for one ride, sold at a reduced rate.^{21a} The granting of commutation rates for suburban travel is quite general, and such rates are defensible on various grounds. They tend to benefit the public by permitting and inducing residence at considerable distance from the place of occupation, thus aiding the territorial growth of cities and relieving their congested districts. So far as

¹⁹ Third Annual Report of I. C. C. (1889).

²⁰ *Larrison v. C. & G. T. R. R. Co.* (1887), 1 I. C. R. 309; 1 I. C. C. R. 147.

²¹ See note 19, *supra*.

^{21a} See note 36, *infra*.

they have that effect, such rates in turn benefit the railways by securing business that otherwise would not exist and revenue not otherwise obtainable. Ordinarily, the price of commutation tickets, the conditions upon which they are sold, and the distance from a given city to which commutation rates shall be extended, are matters within the discretion of the carrier.²²

Excursion tickets, ordinarily, are understood to be round-trip tickets sold at reduced rates issued for one trip and on special occasions, sometimes for health or recreation, and sometimes for army or industrial reunions and assemblages for political, religious, or benevolent purposes.²³

¶ B. LEGALITY OF SUCH TRANSPORTATION.

The Act to Regulate Commerce permits the issuance by carriers of mileage, excursion and commutation passenger tickets.²⁴ The provision of the statute referred to, authorizes special rates to commuters which are less *per mile* than the charges to other passengers for longer distances. Such a regulation of rates must exist under any system of commutation. The most remote point within a commutation district secures lower rates per mile than the next and more distant point without that district, but the discrimination thus created is not unjust, nor are places outside of the commutation territory thereby subjected to undue prejudice.²⁵

¶ C. ISSUANCE OF MILEAGE, EXCURSION AND COMMUTATION TICKETS OPTIONAL WITH CARRIER.

Under the Act, as stated above, carriers are allowed to issue mileage, excursion and commutation tickets, but ordinarily they cannot be compelled to do so. The permission does not create an obligation. To the extent necessary for their use, tickets of the description named are exempt from the general

²² Sprigg et al. v. B. & O. Rd. Co. et al. (1900), 8 I. C. C. R. 443; affirmed in Field v. Southern Ry. Co. (1908), 13 I. C. C. R. 298.

²³ See note 19, *supra*.

²⁴ Act to Regulate Commerce. Section 22.

²⁵ See note 22, *supra*.

rules of the statute. Ordinarily, the price of commutation tickets, the conditions upon which they are sold, and the distance from a given city to which commutation rates are extended, are matters within the discretion of the carrier. However, where a carrier has established commutation rates for suburban service, especially when residences have been fixed, and business interests adjusted in reliance upon their continuance, it cannot suddenly or otherwise withdraw those rates and exact from all its patrons the full regular fare theretofore charged the occasional traveler.²⁶

In *Eschner v. Pennsylvania Railroad Co. et al.*,^{26a} the Commission stated: "If mileage, excursion, or commutation tickets are voluntarily put on sale by carriers, under tariff authority, that clause in the act means that they are exempted from a condemnation that other provisions of the act might require. We think it clear, therefore, that a carrier may not only withhold such special fares from its patrons by omitting to provide for them in its tariffs, but may at its pleasure, at least so long as no undue discrimination or other violation of the act is involved, attach conditions and restrictions to the use of such special fares."

¶ D. REGULATIONS GOVERNING COMMUTATION TICKETS MUST NOT DISCRIMINATE BETWEEN CLASSES OF PERSONS.

A carrier offers a 46-trip monthly commutation ticket and provides that it shall be issued only to pupils, without regard to age, who are in attendance at schools of a certain kind or class, and specifically provides for the exclusion of pupils attending various other kinds of schools: *Held*, That this regulation is unjustly discriminatory, and therefore unlawful, but that carriers may lawfully offer and use a commutation ticket limited in its sale and use to children or young persons between stated ages (*as, for instance, 12 to 21 years of age*). Such arrangement will provide desired rates for school pupils and will not exclude other children traveling under substantially similar

²⁶ *Ibid*.

^{26a} *Eschner v. Pennsylvania Rd. Co. et al.* (1910), 18 I. C. C. R. 60.

circumstances but for the purpose of securing other lines of instruction or on other missions. It will also protect against the use of such tickets by adults. The carrier may not inquire into the mission, errand, or business of the passenger as a condition of fixing the transportation rate which such passenger shall pay.²⁷

The Commission in affirming the above ruling in a later proceeding²⁸ states that Section 2 of the Act to Regulate Commerce precludes the allowance of commutation rates to school children unless the same rates are open to all children within the age limit.

¶ E. JURISDICTION OF COMMISSION OVER MILEAGE, EXCURSION AND COMMUTATION TICKETS.

See *Section 587, Paragraph E, post.*

¶ F. CONDITIONS AFFECTING USE OF MILEAGE BOOKS.

A mileage book is issued usually, if not invariably, at a rate less than the local fare, and in consideration of this the railroad company may, in the issuing of the mileage book, attach to its use various conditions. It might provide, for example, that it should not be used for transportation upon part of a through journey between a point on the railroad issuing the mileage book and a point on some other railroad, whether that journey be state or interstate.³¹

¶ G. SUPPLEMENTING MILEAGE BOOKS BY PAYING REGULAR LOCAL MILEAGE RATES.

The practice under a published tariff rule which permits the holder of a mileage book which does not contain enough coupons to enable him to complete his journey to pay for the balance of the journey at the regular local rate per mile, as published by the carrier, is not unlawful.³²

²⁷ Rule 99, Con. Rul. Bul. No. 4 (Oct. 12, 1908).

²⁸ In the Matter of Regulations Governing Sale of Commutation Tickets to School Children (1909), 17 I. C. C. R. 144.

³¹ See note 9, *supra*.

³² Rule 81, Con. Rul. Bul. No. 4 (June 9, 1908).

¶ H. USE OF INTRASTATE COMMUTATION TICKET IN INTERSTATE JOURNEY.

In the absence of a provision in the commutation contract forbidding it, a commutation ticket may be used between the points named on it in connection with an interstate journey on trains that stop at such points.³³

¶ I. EXCURSION TICKET INVALIDATED THROUGH FAILURE OF CARRIER TO MAKE CONNECTION.

A passenger traveling on a special limited excursion ticket with stopover privilege, leaves a stopover point in ample time to make all connections and meet conditions of ticket; but through successive delays to trains, misses connections at a certain junction, making the ticket twenty-four hours out of date. Regular fare was collected for the balance of the return trip. *Held*, That the carrier ought to make the ticket good, it having become invalid through its fault.³⁴

¶ J. USE OF MILEAGE TICKETS IN NEW TERRITORY.

A tariff authorizes the sale of mileage tickets good between points within a specified limited territory. Subsequent to the date upon which such a ticket is sold and prior to the date of its expiration, the tariff is amended so as to include additional territory. May such mileage ticket be thereafter honored for transportation between points in the added territory? *Held*, That the terms of the contract of original sale must be adhered to unless the amendment to the tariff specifically authorizes honoring outstanding tickets between points in the added territory.³⁵

§ 563. Party-Rate Tickets.

¶ A. PARTY-RATE TICKET DEFINED.

A party-rate ticket is a single ticket covering the trans-

³³ Rule 26, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

³⁴ Rule 27, Con. Rul. Bul. No. 4 (Jan. 13, 1908).

³⁵ Rule 178, Con. Rul. Bul. No. 4 (May 10, 1909).

portation of a number of persons from one place to another on a railroad.³⁶

¶ B. LEGALITY OF PARTY-RATE TICKETS.

Defendant issued party-rate tickets at a lower rate per mile and per capita than it contemporaneously charged for the carriage of a single passenger between the same stations. On complaint that the lower per capita rate at which party-rate tickets were sold operated to discriminate unjustly as against single passengers, and to give party classes an undue or unreasonable preference or advantage, *Held*, In view of the fact that no competitive relation existed between a single passenger and party class, that the relative cost of the service in their transportation was different, that the profit derived from one fairly corresponded with that received from the other, and that the inducement on the part of the carrier for making the reduction in favor of party classes was the development and maintenance of a class of traffic which could not stand higher rates, the services were not substantially similar within the meaning of Section 2 of the Act to Regulate Commerce, nor the preference or advantage in favor of party classes undue or unreasonable under Section 3 of said Act. Such party-rate tickets are "commutation passenger tickets" within the meaning of Section 22 of the statute.³⁶

¶ C. UNITED STATES GOVERNMENT NOT ENTITLED TO THE BENEFIT OF PARTY RATE IN THE TRANSPORTATION OF ITS SOLDIERS, WHICH HAS BEEN ESTABLISHED FOR PLEASURE, THEATRICAL AND SIMILAR PARTIES.

The Chicago & Northwestern Railway had in effect a party-rate applicable to theatrical and amusement companies. The United States Government claimed the benefit of this rate. It transported over the line of the railway company certain parties of troops, more than ten in number, that being the

³⁶ I C. C. R. v. B. & O. Rd. Co. (1890), 43 Fed. Rep. 37, 43; affirmed, 145 U. S. 263; 12 Sup. Ct. Rep. 844; 36 L. ed. 699, refusing to enforce order of Commission, P. C. & St. L. Ry. Co. v. B. & O. R. Co., 3 I. C. R. 465; 2 I. C. R. 729.

minimum number to which the party rate applied and insisted that in making settlement for the transportation of these troops it should be allowed the same rate per mile fixed by the party-rate schedule of the railway company. The lower Federal Court held otherwise, and the Circuit Court of Appeals affirmed that judgment. It held, that the circumstances and conditions under which the troops were transported for the Government were not the same as those under which theatrical and other amusement companies were moved by the railway company, noting the following differences:³⁷

1. The party-rate ticket is limited, whereas the Government requires a ticket of unlimited services.

2. The Government does not pay in advance for its ticket, but only settles after a considerable period of time and often much annoyance and inconvenience and sometimes actual deductions.

3. Many amusement companies and similar organizations could not travel if obliged to pay the regular rate of fare. The giving of these reduced fares stimulates this kind of business and adds to the revenues of the railways without any corresponding increase in the cost of operation.

4. While these tickets are only sold from point to point on the line of a particular railway, it is reasonably certain that the Company will buy more than the one ticket in going from place to place.

5. The traveling of amusement companies stimulates other kinds of travel. The performance of a great singer at some point on the line of a railway might induce hundreds of other persons to buy tickets to the same point, while the movement of ten soldiers would have no such effect.

6. The Government is not in any way in competition with any other members of the public in the movement of troops, and hence there can be no unjust discrimination.

³⁷ U. S. v. C. & N. W. Ry. Co. (1904), 127 Fed. Rep. 785; 62 C. C. A. 465.

¶ D. PARTY-RATE TICKETS MUST BE OPEN TO THE GENERAL PUBLIC.

On April 8, 1907, the Commission in a case entitled *In the Matter of Party-Rate Tickets*³⁸ held that party-rate tickets cannot be limited to particular classes of persons, but must be open to the general public. It will be seen from this opinion that under the holding of both our own and the English courts Section 2 prescribes a rigid rule of action. If the circumstances and conditions of the carriage itself are the same the charge must be the same. The Commission was unable to see how the carriage of ten persons belonging to an amusement company, as a party, differs from the carriage of ten other persons, as a party, in the same train, at the same time, and between the same points; and it was therefore of the opinion that the party-rate ticket must be open to the general public. It did not deem it necessary to discuss the question of policy involved since, in its opinion, the decisions of the Supreme Court precluded such discussion.³⁹ It may be observed, however, that these party-rate tickets are not confined to amusement organizations, nor to organizations at all. They are being extended to the movement of parties of beet weederers, of oyster shuckers, of hop pickers, of coal miners.

Nor is it correct to say that no competitive element is involved. Whether the harvest field or the coal mine shall be without laborers may depend upon the manner in which these very tickets are granted. To allow railway companies to accord to different individuals a different rate, when every incident of the carriage itself is the same, simply by reason of the difference in vocation of the passenger, in the opinion of the Commission, would introduce a most dangerous practice.

The Commission said: "That the man who sings is a dif-

³⁸ In the *Matter of Party-Rate Tickets* (April 8, 1907), 12 I. C. C. R. 96; affirmed in *Field v. Southern Ry. Co. et al.* (1908), 13 I. C. C. R. 298.

³⁹ *Wight v. United States*, 167 U. S. 512; 42 L. ed. 258; 17 Sup. Ct. Rep. 822; *I. C. C. v. Alabama Midland Ry. Co.*, 168 U. S. 144; 42 L. ed. 414; 18 Sup. Ct. Rep. 45.

ferent *kind* of traffic from the man who talks or the man who delves is certainly a novel proposition. The circumstances and conditions surrounding the transportation of these different individuals may be entirely different, but the Supreme Court has explicitly defined the limits within which such difference of circumstances and conditions may be considered."

¶ E. DIFFERENT FARES TO DIFFERENT SOCIETIES UNLAWFUL.

A tariff covering daily picnic excursions between certain points for the season named fares for Sunday and day schools and different fares for "societies." *Held*, That the tariff is discriminatory and that the fares for the school picnic should be the same as for society picnics.⁴⁰

¶ F. REGULATIONS GOVERNING ISSUANCE AND USE OF PARTY-RATE TICKETS.

The tariffs and regulations governing the issuance and use of party-fare tickets, together with the rules relating to the allowance of free baggage to persons using such tickets must be regularly filed and published. The privileges so extended must not be limited to any particular class or classes of persons, but must be open to all. Regulations governing the issuance and use of party-fare tickets must not be such as will operate to evade or nullify any provision of the law. The Commission suggested that the rules should provide that the party shall travel on one ticket and consist of not less than ten persons. The Commission has ruled that carriers may provide in their tariffs as follows:⁴¹

When a party of ten (10) or more persons are traveling on a party-fare ticket and require the exclusive use of a baggage car, and such baggage car is not forwarded upon the same train which bears the passengers, and where it is necessary that one or more of the party shall accompany the baggage car, a separate ticket may be issued for the use of such men as members of the party, provided such ticket is indorsed as a part of such party fare ticket and for, and limited to, the train upon which the baggage car is hauled.

It is not, however, lawful or permissible to permit a person

⁴⁰ Rule 71, Con. Rul. Bul. No. 4 (May 5, 1908).

⁴¹ Rule 62, Tariff Circular 17-A.

or persons to go in advance of or to follow the party as passengers and be computed as a part of the party or as entitled to the party fare. All tariff provisions to such effect are unlawful.⁴²

§ 564. Joint Interchangeable Five-Thousand-Mile Tickets.

¶ A. ISSUANCE OF SUCH TICKETS.

Section 22 of the statute provides, "That nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles."

¶ B. PUBLICATION OF RATES.

The statute provides that before any common carrier, subject to the provisions of the Act, shall issue any such joint interchangeable mileage tickets with special privileges, as stated above, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried upon such tickets, in the same manner as common carriers are required to do with regard to other joint rates by Section 6 of the Act; and all the provisions of said Section 6 relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said Section 6.⁴³

¶ C. SALE OF TICKETS.

The statute provides that it shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less com-

⁴² Rule 62, Tariff Circular 17-A.

⁴³ See note 24, *supra*.

pensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time.⁴⁴

§ 565. Round-Trip Tickets on Certificate Plan.

Round-trip tickets on the certificate plan may be issued at reduced fares and their use confined to the delegates to a particular convention or to the members of a particular association or society, upon the condition that a certain number of such tickets shall be presented for validation for return trip before the reduced fare for return trip will be granted to any. Tariffs of fares and regulations governing issuance and use of round-trip tickets on the certificate plan must be regularly filed and posted, and the regulations must not be such as will operate to evade or nullify any provision of the law. The Commission has suggested that the rule should provide that not less than one hundred tickets shall be presented for validation for return trip before reduced fare will be granted to any.⁴⁵

Round-trip tickets on certificate plan may also be issued to Government employes going home to vote and returning to their employment.

It is represented that in many instances persons desiring to attend on some particular day the convention are prevented from promptly returning to their homes because the minimum number of tickets required has not been presented for validation. Answering numerous inquiries, the Commission has expressed the opinion that it would not be unlawful or improper for carriers to accept a satisfactory guaranty or bond of an association or society, *which is entitled to and for which the round-trip fare is made*, that the minimum number of tickets will be validated or the difference between the reduced fare and the full fare paid by the association or society, thus permitting the prompt validation of tickets and reduced re-

⁴⁴ See note 24, *supra*.

⁴⁵ Rule 53, Tariff Circular 17-A.

turn-trip fare, it being understood that if the specified number of tickets be not validated the society will, in good faith, be required to pay the difference agreed upon.⁴⁶

§ 566. Chartering Trains.

It is not unlawful for a railroad company to publish a tariff under which a locomotive and train of cars may be chartered at a named rate, tickets for the journey on that train to be sold by the person chartering the train.⁴⁷

§ 567. Charges for Moving Private Cars.

A tariff provided for the movement of a private car or sleeper at the regular fare for each occupant with a minimum of twenty adult fares and a minimum collection of \$25 for each movement. Its direct line being blockaded by a washout, a carrier sent individual passengers around a longer route over its lines at the short-line fare, but charged the occupants of such a private car then on its line the full mileage rates for the longer haul: *Held*, That under the tariff rule the car and party should have moved as the individual passengers were moved under the same circumstances; and that the short-line fare ought to have been applied to the private car and party.⁴⁸

§ 568. Validation of Round-Trip Passenger Tickets.

¶ A. CONDITIONS RELATING TO VALIDATION OF TICKETS MUST BE SHOWN IN TARIFFS.

The condition that a round-trip passenger fare ticket shall be validated for the original purchaser by carrier's agent at a given point is one of the conditions which affects the value of the service rendered to the passenger, and is one of the conditions that must be observed the same as the rate under which the ticket is sold, and must therefore be stated in the tariff under which it is sold. The tariff may provide for validation at numerous points, and it may provide for validation

⁴⁶ Rule 53, Tariff Circular 17-A.

⁴⁷ Rule 82, Con. Rul. Bul. No. 4 (June 9, 1908).

⁴⁸ Rule 138, Con. Rul. Bul. No. 4 (Feb. 2, 1909).

at any point intermediate to the original destination named in the ticket.

The conditions stated upon the ticket should not conflict with the tariff provisions, but if in any case there should inadvertently be conflict between the tariff provisions and the conditions stated on the ticket the tariff rule must govern.⁴⁹

¶ B. VALIDATING TICKETS IN CASES OF ILLNESS OR DEATH.

A carrier may provide in its tariff that in case of illness or death of passenger or member of his family who is traveling with him, specified officer of carrier may validate round-trip ticket held by such passenger at point short of that at which ticket would otherwise be validated.⁵⁰

¶ C. FAILURE TO VALIDATE PASSENGER TICKET.

A carrier may lawfully incorporate in its tariff a rule providing that when a passenger is compelled to pay the regular return fare because of his failure to have his round-trip ticket validated at the return starting point, the carrier will refund the extra fare upon the filing with it of an affidavit by the holder of the round-trip ticket, certifying that the ticket has been used in accordance with all the conditions of the tariff and the contract on the ticket, except as to the matter of validation.⁵¹

§ 569. Failure to validate Passenger Tickets.

Upon inquiry the Commission *held*, That a carrier might lawfully incorporate in its tariff a rule providing that when a passenger is compelled to pay the regular return fare because of his failure to have his round-trip ticket validated at the return starting point, the carrier will refund the extra fare upon the filing with it of an affidavit by the holder of the round-trip ticket, certifying that the ticket had been used in

⁴⁹ Rule 73, Tariff Circular 17-A; Rule 75, Con. Rul. Bul. No. 4 (May 12, 1908).

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

accordance with all the conditions of the tariff and the contract on the ticket except as to the matter of validation.⁵²

§ 570. Stop-overs and Extensions of Time on Limited Tickets.

¶ A. EXTENSIONS MAY BE ALLOWED ON LIMITED TICKETS IN CASE OF ILLNESS.

Carriers may provide in their tariffs that limited passenger tickets may be extended in case of the illness of the passenger holding such ticket. Tariffs must give the title of the officer who shall have authority to give extension, and such officer shall be required by the carrier to keep a memorandum of each instance in which such extension is given, and the date upon which it is allowed. Such information shall be subject at any time to be called for by the Commission. This rule must be applied strictly and in good faith, and upon the carrier is placed the responsibility of strict conformity thereto. Only such illness as makes travel dangerous to the health of the traveler will justify the extension herein provided for.⁵³

¶ B. EXTENSION MAY INCLUDE MEMBERS OF FAMILY TRAVELING TOGETHER.

The above extension may also be granted to one or more members of the family of the passenger who is ill, when traveling together.⁵⁴

¶ C. EXTENSION IN CASES OF QUARANTINE.

The above extension may be granted to persons who are subject to an established quarantine.⁵⁵

¶ D. EXTENSION IN CASE OF WASHOUTS, WRECKS, ETC.

A carrier may provide in its tariffs that whenever, because of washouts, wrecks, or other obstruction to its tracks, public calamity, the act of God or of the public enemy, a passenger is delayed on its lines so that the limit of such passenger's

⁵² Rule 125, Con. Rul. Bul. No. 4 (Dec. 8, 1908).

⁵³ Rule 69, Tariff Circular 17-A.

⁵⁴ Ibid.

⁵⁵ Ibid.

ticket has expired or has elapsed to such an extent as to curtail his stopover privileges, the conductor or other specified agent will give by indorsement on the ticket or otherwise certificate of such detention, and that such certificate will operate to extend the limit of such ticket to the extent of detention so certified, and that such extension will be honored by succeeding conductors on its lines. It may also provide that like certificates of detention and extension given by other carriers will be honored on its line; but no carrier may so extend any part of a ticket reading over lines other than its own except when provision therefor is contained in a joint tariff properly concurred in.⁵⁶

¶ E. STOP-OVER PRIVILEGES.

Stop-over privileges for a limited time may be granted for the same causes and under the same conditions and restrictions as justify extension of time on limited tickets.⁵⁷

¶ F. PROVISION FOR EXTENSION MUST BE IN TARIFFS.

No extension of time upon limited tickets or stopover privileges will be recognized as valid unless provision therefor is made in the carrier's published tariffs.⁵⁸

§ 571. Limitation of Time in Passenger Tickets.

A passenger traveling on a round-trip ticket containing the provision that "This ticket will be good for return trip to starting point prior to midnight of date punched by selling agent in column 2. Final limit"; did not reach the last connecting carrier before the date punched on the ticket. The passenger was required to pay full fare on the last connecting line. *Held*, That a refund could not lawfully be made.⁵⁹

§ 572. No Refund to Passenger who exceeds Stop-over Limit.

A passenger, while availing himself of a stopover privilege at a certain point in his journey, was subpoenaed as a witness

⁵⁶ Rule 69, Tariff Circular 17-A.

⁵⁷ *Ibid*.

⁵⁸ *Ibid*.

⁵⁹ Rule 44, Con. Rul. Bul. No. 4 (March 3, 1908).

in a proceeding in a civil court, and obeying the process was not able to proceed on his journey within the time limit of the stopover. As a result he was compelled to pay an additional fare from that point to destination. *Held*, That a refund could not lawfully be made.⁶⁰

§ 573. The Use of Pullman Cars at Stop-over Points cannot be Limited to Members of a Particular Club.

A carrier desiring to make excursion rates to a point where a convention is to be held wishes to accord to members of certain clubs the privilege of occupying the sleeping cars while the convention is in session: *Held*, That the carrier may lawfully arrange an excursion rate to such point and return, the rate to include sleeping-car accommodations to and from that point with the privilege of occupying the car at that point during the convention; but that the Commission does not understand that the carrier may limit the privilege to the members of any particular club.⁶¹

§ 574. Redemption of Unused Passenger Tickets.

Because of illness or other compelling reason a passenger sometimes abandons a trip short of destination to which the fare has been paid, or returns from a point short of that to which he has purchased a round-trip ticket. On the question of the right of the carrier to refund the fare in such a case, the Commission decided that when a passenger has paid more than the lawful tariff fares for the journey actually made the carrier may lawfully redeem the unused ticket and make refund on the basis of the lawful tariff fare for the service actually rendered, when investigation develops clear identity between purchaser of ticket and the one to whom refund is made.⁶²

The unused portion of a passenger ticket, when presented by the original holder to the carrier that issued it, may lawfully be redeemed by the carrier by paying to the holder the difference between the value of the transportation furnished

⁶⁰ Rule 60, Con. Rul. Bul. No. 4 (April 7, 1908).

⁶¹ Rule 51, Con. Rul. Bul. No. 4 (March 11, 1908).

⁶² Rule 115, Con. Rul. Bul. No. 4 (Nov. 12, 1908).

on the ticket at the full tariff rates and the amount originally paid for the ticket.⁶³

§ 575. Refund of Unused Portion of Round-Trip Ticket.

Because of a washout of a portion of its tracks a carrier was unable to operate trains and thus return a passenger over that route within the time limited in a round-trip ticket which she held. A circuitous route was open to her, but on account of her age and the condition of her health she did not think it safe to take so long a journey, and therefore, waiting until the tracks had been repaired, which was after the expiration of the time limit of the ticket, she purchased a one-way ticket back to her home: *Held*, That as the carrier was not able to furnish the service which it undertook to furnish within the time limited in the round-trip ticket, it might lawfully refund the extra return fare so paid by the passenger.⁶⁴

§ 576. Passenger Ticket honored by Wrong Line.

A coupon reading over one line was honored through error by the conductor of another line running between the same points, and the latter called upon its conductor to make good the amount: *Held*, That the matter was one of discipline between the company and its conductor, and was not cognizable by the Commission.⁶⁵

§ 577. Tickets for Transportation and Meals, Hotel Accommodations, etc.

A carrier published a tariff offering certain transportation fares and rates for personally-conducted tours with tickets to cover meals, hotel accommodations, etc., and declined to sell the transportation ticket to any one who does not also purchase the tickets covering meals and hotel accommodations. *Held*, That the two matters must be kept separate, and carriers may not decline to sell such transportation without tickets for meals and hotel accommodations.⁶⁶

⁶³ Rule 76, Con. Rul. Bul. No. 4 (May 12, 1908).

⁶⁴ Rule 116, Con. Rul. Bul. No. 4 (Nov. 13, 1908).

⁶⁵ Rule 105, Con. Rul. Bul. No. 4 (Nov. 9, 1908).

⁶⁶ Rule 28, Con. Rul. Bul. No. 4 (Jan. 13, 1908).

§ 578. Entertainment provided, or Contribution made by a Carrier.

A carrier's agent may, as a matter of convenience, sell admission tickets to entertainments in connection with which excursion-fare tickets are sold, but the purchase of such admission tickets must not be made a condition of the sale of transportation ticket.

The Act does not prohibit a carrier from providing in its own interest and as a means of stimulating travel over its line an entertainment at a point on its line; nor from contributing to the expense of such an entertainment if such contribution be made in a definite sum and be in no way dependent or contingent upon the number of tickets sold, and provided that no part of such contribution be by any device or through any person whatever permitted to effect any departure from or discrimination under the carrier's tariff fares.⁶⁷

§ 579. Established Passenger Fares must be observed.

Passenger fares lower than the established tariff are prohibited by the statute.⁶⁸

It is certainly true that if carriers publish a joint through rate between two points they cannot contract to transport the passenger between those points for a less sum than the published schedule.⁶⁹

In every instance where there is a *specific* fare from point of origin to point of destination it must be applied to through passengers regardless of possible lower combinations.⁷⁰

A joint fare when duly established and in force becomes the only lawful fare for through transportation.⁷¹

A through fare from point of origin to destination of a passenger is the lawful fare applicable to that movement, whether

⁶⁷ Rule 221, Con. Rul. Bul. No. 4 (1908).

⁶⁸ Re Passenger Tariffs and Rate Wars (1889), 2 I. C. R. 340, 2 I. C. C. R. 513.

⁶⁹ See note 9, *supra*.

⁷⁰ Rule 64, Tariff Circular 17-A.

⁷¹ Rule 55, Tariff Circular 17-A.

the fare be confined to the line of one carrier or be a joint fare applying over the lines of two or more carriers.⁷²

§ 580. Carrier may employ Person to work Up Excursion Travel.

A carrier may, actually and in good faith, employ a person to act for it in working up passenger excursions, and make his compensation depend upon the results from his efforts, by executing contract in the following form and filing copy of same, together with reference by I. C. C. number to the tariff which contains the fares, with the Commission.⁷³

The Rail Company, having arranged to run an excursion from to and return, on, to be known as the excursions, at the following fares: Adults, ...; children, ..., hereby engages the services of, residing at, to solicit and develop business for said excursion. The said hereby agrees to devote to this work such portion of his time from to as may be necessary, in consideration of which the Rail Company agrees to compensate him as follows: If adult tickets, or their equivalent are sold, ... cents for each adult and cents for each half ticket so sold.

It is understood and agreed that no compensation will be paid hereunder if less than adult tickets, or their equivalent are sold.

It is understood and agreed that no part of the compensation paid by the Rail Company to the said shall be used, either directly or indirectly, to reduce the lawful published fares announced by the said Rail Company, or to in any other manner violate the terms of the Act to Regulate Commerce or any other federal or state law regulating common carriers.

§ 581. Error by Carrier's Agent causing Passenger to pay Additional and Unnecessary Charges.

Agents of carriers sometimes misroute passengers or by other error cause passengers to pay additional and unnecessary transportation charges. The Commission has stated that such cases are governed by the same principle as applicable to the misrouting of freight traffic.⁷⁴ The reader is therefore referred to *Section 424, ante*.

⁷² Rule 55, Tariff Circular 17-A.

⁷³ See note 67, *supra*.

⁷⁴ Rule 113, Con. Rul. Bul. No. 4 (Nov. 12, 1908).

§ 582. Nontransferable Passenger Tickets.

¶ A. RIGHT OF CARRIER TO ISSUE NONTRANSFERABLE PASSENGER TICKETS.

Railroad companies have the right to sell nontransferable reduced-rate excursion tickets,⁷⁵ and the condition of non-transferability and forfeiture embodied therein is not only binding upon the original purchaser but upon anyone who acquires such a ticket and attempts to use the same in violation of its terms.⁷⁶

¶ B. DUTY OF CARRIER TO CAUSE THE NONTRANSFERABLE CLAUSE TO BE OPERATIVE AND EFFECTIVE.

The express recognition in the Act to Regulate Commerce of the power of carriers engaged in interstate commerce to issue nontransferable reduced-rate excursion tickets, when considered with the restrictions embodied in the Act concerning equality of rates, and with the prohibition against preferences, must be regarded as charging the carrier with the duty of exercising due diligence to prevent the use of such tickets by others than the original purchasers, and hence cause the nontransferable clause to be operative and effective against anyone who wrongfully attempts to use such tickets.⁷⁷

¶ C. NONTRANSFERABLE LIMITATION IN PASSENGER TICKET VOID UNLESS SHOWN IN PUBLISHED SCHEDULE.

Under the Interstate Commerce Act as amended by the Act of June 29, 1906, which, after requiring carrier to publish and file schedules showing all of their rates, fares, and charges, provide that "the schedule printed as aforesaid by any such common carrier shall plainly state * * * all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect or determine * * * the value of the service rendered the passenger, shipper or con-

⁷⁵ Mosher v. St. L. I. M. & S. Ry. Co. (1887), 127 U. S. 390, 8 Sup. Ct. 1324, 32 L. ed. 249.

⁷⁶ Bitterman v. L. & N. Rd. Co., 207 U. S. 205; 52 L. ed. 171, 28 Sup. Ct. 91 (1907).

⁷⁷ Ibid.

signee," a provision in a passenger ticket sold by a railroad company making it nontransferable where no such limitation is shown in the company's schedule, is unlawful and void, and the company cannot maintain a suit in equity based on such provision to enjoin transfer of such tickets.⁷⁸

§ 583. Publication of Passenger Fares.

See *Chapter 34, post*.

§ 584. Published Fares must not be deviated from.

The statute provides that no common carrier shall charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers, or for any service in connection therewith, between the points named in the tariffs than the fares and charges which are specified in the tariffs filed and in effect at the time.⁷⁹

§ 585. Discrimination in Fares for Transportation of Passengers.

See *Section 379, ante*.

§ 586. Jurisdiction of Interstate Commerce Commission over Passenger Fares and Tickets.

¶ A. COMMISSION MAY DETERMINE AND PRESCRIBE JUST AND REASONABLE FARES TO BE OBSERVED AS MAXIMA CHARGES FOR TRANSPORTATION OF PASSENGERS.

The Act to Regulate Commerce (*as amended June 18, 1910*) authorizes and empowers the Commission, whenever, after full hearing on a complaint made as provided in Section 13 of the Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), it shall be of the opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of the Act for the transportation of persons as defined

⁷⁸ B. & O. R. Co. et al. v. Hamburg et al. (1907), 155 Fed. Rep. 849.

⁷⁹ Act to Regulate Commerce. Section 6.

in the first section of the Act, or that any individual or joint regulations or practices whatsoever of such carrier or carriers subject to the provisions of the Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of the Act, to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged.⁸⁰

¶ B. COMMISSION MAY UPON ITS OWN INITIATIVE ENTER UPON HEARING CONCERNING PROPRIETY OF NEW FARE.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that whenever there shall be filed with the Commission any schedule stating a new individual or joint fare or charge, or any new individual or joint regulation or practice affecting any fare or charge, the Commission shall have, and it is given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such fare, charge, regulation, or practice.^{80a}

¶ C. COMMISSION MAY DETERMINE AND PRESCRIBE JUST AND REASONABLE REGULATIONS OR PRACTICES.

The Commission may determine and prescribe what regulation or practice in respect to passenger transportation is just, fair, and reasonable to be thereafter followed.⁸¹

¶ D. COMMISSION MAY ORDER CARRIERS TO CEASE AND DESIST FROM FULL EXTENT OF VIOLATIONS FOUND.

The statute empowers the Commission to make an order that the carrier or carriers shall cease and desist from the violation

⁸⁰ Act to Regulate Commerce. Section 15 (*as amended June 18, 1910*).

^{80a} *Ibid*.

⁸¹ *Ibid*.

as stated in *Paragraph A, supra*, to the extent to which the Commission finds the same to exist, and to not thereafter publish, demand or collect any other rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and to conform and observe to the regulation or practice so prescribed.⁸²

¶ E. ORDERS OF COMMISSION SHALL CONTINUE IN FORCE NOT EXCEEDING TWO YEARS UNLESS SUSPENDED OR SET ASIDE BY COMMISSION OR COURT.

The statute provides that all orders of the Commission relating to rates or charges shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction.⁸³

¶ F. JURISDICTION OF COMMISSION OVER MILEAGE, EXCURSION AND COMMUTATION TICKETS.

The Act as originally adopted in 1887 provided in Section 22, "That nothing in this Act shall *apply to* * * * the issuance of mileage, excursion or commutation passenger tickets." As amended in 1889 it now reads, "That nothing in this Act shall *prevent* * * * the issuance of mileage, excursion or commutation passenger tickets." This is a very important change and must be assumed to have been made for some purpose. One purpose may very well have been to remove any possible doubt whether under the law as it existed before the general rules of equality, impartiality, and publicity prescribed for other cases were applicable to these classes of tickets to which in terms it was said nothing in the Act should apply. These words of exclusion are no longer in the statute and the general requirements it makes are as applicable to these classes of tickets as to any others. They must, there-

⁸² Act to Regulate Commerce, Section 15 (as amended June 18, 1910).

⁸³ *Ibid.*

fore, be offered impartially to all who accept the conditions on which they are issued, and the rates must be published as is required in the case of other tickets.^{83a} Compliance with the general rules of the statute may be directed by the Commission, but requiring exceptions thereto is not within its province; and this applies as well to the restoration of such tickets where they have been withdrawn as to the refusal to furnish them where their introduction has been requested. It may be, however, that the allowance of commutation rates at stations on one line of a railway system, and the denial of such rates at stations on another line of the same system, such stations being of *similar character* and *similar distances* from a common terminus, would be an undue preference within the power of the Commission to correct.^{83b} However, the language of the Act relating to the issuance of mileage, excursion and commutation tickets is altogether permissive, and the Commission has no affirmative power to require carriers to establish for the use of passengers on particular occasions or for special purposes, special fares based upon less than a normal passenger-mile revenue.⁸⁴

¶ G. POWER OF COMMISSION TO RESTRAIN ENFORCEMENT OF
NEW FARE OR CHARGE OR REGULATION OR PRACTICE
AFFECTING SAME PENDING INVESTIGATION.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) reads as follows:

“Whenever there shall be filed with the Commission any schedule stating a new individual or joint * * * fare, or charge * * * or any new individual or joint regulation or practice affecting any * * * fare or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal

^{83a} Re Passenger Tariffs (1889), 2 I. C. R. 445; 2 I. C. C. R. 649.

^{83b} See note 22, *supra*.

⁸⁴ Eschner v. Pa. Rd. Co. (1910), 18 I. C. C. R. 63, predicated on Field v. Southern Ry. Co. et al. (1908), 13 I. C. C. R. 298, citing Cator v. Southern Pacific Ry. Co. et al. (1893), 4 I. C. R. 397, 6 I. C. C. R. 113, and Sprigg v. B. & O. R. R. Co. et al. (1900), 8 I. C. C. R. 443.

pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such * * * fare, charge, * * * regulation or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such * * * fare, charge, * * * regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such * * * fare, charge, * * * regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the * * * fare, charge, * * * regulation, or practice goes into effect, the Commission may make such order in reference to such * * * fare, charge, * * * regulation, or practice as would be proper in a proceeding initiated after the * * * fare, charge, * * * regulation, or practice had become effective; *Provided*, That if any such hearing cannot be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months."

¶ H. COMMISSION NO AUTHORITY TO ESTABLISH FARES WITH
INDEPENDENT WATER CARRIERS.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) provides that the Commission shall not have the right to establish any fare or charge when the transportation is wholly by water, and that any transportation by water affected by that act shall be subject to the laws and regulations applicable to transportation by water.

§ 587. Tickets purchased at the Regular published Fare may
be Given by a Land Company to Prospective Purchasers.

A land company having no relations, direct or indirect, with a carrier has a lawful right to pay all or any part of the carrier's transportation charges for such persons as it may choose to supply with tickets.⁸⁵

⁸⁵ Rule 154, Con. Rul. Bul. No. 4 (April 5, 1909).

§ 588. A Carrier must publish Fares and offer to the Public Railroad Tickets Independent of Omnibus Arrangements.

A carrier under a tariff provision sold excursion tickets to a point on its line to which is attached a coupon for carriage from that point to Luray Caverns and return on the omnibuses of a designated transfer company: *Held*, That this was not a discrimination under the Act against another transfer company. The Commission ruled, however, that while such tickets may lawfully be sold, the carrier must publish the railroad fare to the point in question and separately show 'bus fare beyond, and must also have on sale tickets to that point at the rate named without 'bus coupon attached.⁸⁶

§ 589. Sale of Tickets after Departure of Last Train on Final Selling Date.

Tariff quoting passenger fares provides that tickets shall be on sale between certain specified dates and that they shall be good going for a specified period, including the date of sale. Passenger desiring to take advantage of such fare applied for such ticket on the last day of sale and after the last train for the day had departed from that station. Agent refused to issue the ticket desired. The time limit specified in the tariff was sufficient to carry the passenger through to destination within that limit even if he left the initial point on the day following the last date of sale. Tariff did not require that journey should commence on the date of sale of ticket: *Held*, That agent should have issued the ticket requested, the time limit thereunder being sufficient to carry passenger through to destination by his starting on the following day, and the tariff containing no requirement as to the date upon which the journey should begin; *Held further*, That if the tariff had provided that the journey must commence on the day of sale of ticket, agent could not legally have issued such ticket after the last train for the day had departed on the last date of sale.⁸⁷

⁸⁶ Rule 164, Con. Rul. Bul. No. 4 (April 12, 1909).

⁸⁷ Rule 182, Con. Rul. Bul. No. 4 (June 7, 1909).

CHAPTER XXXIII.

FREE AND REDUCED-RATE TRANSPORTATION OF PASSENGERS.

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SECTION

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§ 590. - The Evils of Free Transportation which were sought to be Corrected by the Act to Regulate Commerce.

“The Act to Regulate Commerce undoubtedly was framed to prohibit passes or free transportation of persons as one of the forms of unjust discrimination, favoritism and misuse of corporate powers that had grown into an abuse of large proportions and become demoralizing in its influence and detrimental to railroads, both in loss of revenue and in provoking public hostility. One of the minor and meaner phases of this

abuse was the distinctive preference shown in various ways by employees, both in service and civility, to holders of passes, as if discrimination of free carriage included discrimination in the treatment of passengers.

“It was well known that the persons who were carried free were, to a large extent, precisely the persons who had no claim whatever to such favors. They were officials and others, from whom free passes might be expected to secure reciprocal favors, and men of wealth and prominence who rode at the expense of others less able to pay; or the passes were given to influence business. In nearly all cases not specially exempted by the Act, the motive in demanding or in giving them was one deserving of no favor.”¹

“Passes to shippers, or those who control shipments, reduced the cost of freight transportation to them by the amount of the established fares covering such journeys as their business, and often their pleasure, required, and it is obvious that the amount of rebate from freight charges thus given to different shippers must always be variable. The “pass device” not only resulted in payment of less than the established freight rates by shippers, but, like all other illegitimate concessions to railway patrons, it brought about discrimination between those to whom such transportation favors were granted. The issuance of these passes, annual or trip, was not always confined to a single person in any one shipping establishment; the favors once extended to a member of the firm or a traveling employee, might be demanded with as much reason for others connected with the business. These demands, coming from shippers having the choice of two or more competing routes, were attended with the implied threat that failure to comply might result in loss of freight business; and the fact that they were made upon each of the competing roads seemed to make little, if any, difference.

“Another necessary result of issuing passes at the request of shippers or receivers of goods, in order to secure or retain patronage, was that the person or firm doing the greatest amount

¹ Third Annual Report of I. C. C. (1889).

of business was generally able to obtain or have offered the largest number of passes. The giving of free transportation to members or employees of a shipping concern resulted plainly in two kinds of unjust discrimination—one against other shippers and one against other passengers.”²

“The law aimed at the correction of the abuses of free transportation and in accomplishing this general purpose, some forms of free or reduced transportation that at first view might appear plausible, or even unobjectionable in themselves, fell under its general restrictions. The principle of equality, under like conditions, for the traveling public had been grossly violated by the railroads. Favored persons or classes of persons had been furnished free transportation at the expense of the general public by higher general charges to reimburse for gratuitous carriage. The discrimination is equally unjust whether the free transportation be complimentary or to aid some person’s business, or for some supposed indirect advantage to the carrier. The correction of the evil, and the equality of right to which all are entitled, required the restrictions to be general and sweeping to furnish any substantial assurance that the abuse should not be continued or new ones devised under cover of any discretion left to the carrier.

“For reasons deemed adequate by the legislative body certain specified exceptions are made in the statute of classes of persons to whom reduced rates or free transportation may lawfully be given, in whose favor discrimination was not deemed unjust. The classes of persons that may have reduced rates or free carriage are carefully specified in the statute, and their enumeration necessarily excludes all others.”³ These excepted classes are treated of in the sections following. For further explanation as to the evils of free transportation see comments under “*Historical Antecedents*,” Chapter 1, *ante*.

² Tenth Annual Report of I. C. C. (1896).

³ See note 1, *supra*.

§ 591. Unlawful for Carriers to issue or give any Interstate Free or Reduced-Rate Transportation.

Section 1 of the Act to Regulate Commerce prohibits every common carrier subject to the provisions thereof from issuing or giving, directly or indirectly, any interstate free ticket, free pass, or free transportation for passengers.⁴

Section 6 of the Act also provides that no carrier subject to its provisions shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers, or for any service in connection therewith, between the points named in the tariffs, than the rates, fares, and charges which are specified in the tariffs filed with the Commission and in effect at that time; nor shall any carrier refund or remit in any manner or by any device any portion of the rate, fares, and charges specified, nor extend to any person any privileges or facilities in the transportation of passengers except such as are specified in such tariffs.⁵

An officer of a railroad company engaged in interstate commerce who, as a matter of personal favor, issues to a person not within the exception contained in the Interstate Commerce Act, a free pass for transportation from one State to another, is guilty of a violation of the Act.⁶

§ 592. Penalty of Carrier for issuing or giving Free Transportation in Violation of the Statute.

See *Section 756, post.*

§ 593. Penalty of Person using Free Transportation in Violation of the Statute.

See *Section 757, post.*

§ 594. Excepted Classes enumerated in the Act to Regulate Commerce to whom Interstate Free or Reduced-Rate Transportation may Lawfully be Issued or Given.

The following is an enumeration of the excepted classes of

⁴ Act to Regulate Commerce. Section 1.

⁵ Act to Regulate Commerce. Section 6.

⁶ In Re Charge to Grand Jury (1895), 66 Fed. Rep. 146.

persons to whom interstate free tickets and free passes, and free or reduced-rate transportation, may lawfully be issued or given,⁷ and these classes for convenience may be divided into four groups, viz.:

(1) To employees of common carriers and their families; to their officers, agents, surgeons, physicians and attorneys-at-law;

(2) To ministers of religion, traveling secretaries of railroad Young Men's Christian Associations; inmates of hospitals and charitable and eleemosynary institutions; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation, or to municipal governments for the transportation of indigent persons; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning after discharge;

(3) To necessary caretakers of live stock, poultry, milk and fruit; to employes on sleeping cars, express cars, and to line-men of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents; witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and nurses attending such persons;

(4) To passengers carried free by common carriers with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation.

¶ A. TERM "EMPLOYEES" DEFINED.

The Act provides that the term "employees" as used in this section shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such carrier, and the remains of a person killed in the employment of a carrier and ex-em-

⁷ Act to Regulate Commerce. Sections 1 and 22.

ployees traveling for the purpose of entering the service of any such carrier.⁸

¶ B. TERM "FAMILIES" DEFINED.

The Act provides that the term "families" as used in this section shall include the families of persons killed, and the widows during widowhood and minor children during minority of persons who died while in the service of any such common carrier.⁹

The Commission holds that the word "family" as used in Section 1 of the Act to Regulate Commerce, includes those who are members of, and who habitually reside in the household of the person eligible to receive family passes, including household servants when traveling with the family or with any member thereof, and relatives who are in fact dependent upon such person, although not actually residing in his household.¹⁰

An engineer of one carrier having ended his run for the day was preparing to return to his home over another line, the train service of which was more convenient. He lost his life by inadvertently stepping in front of a train of this carrier. Upon inquiry whether under the provisions of Section 1 free transportation might be given to his widow and children by the road by which he had been employed: *Held*, That the case comes within the spirit and meaning of that section.¹¹

May an employee use free transportation for the remains of his wife after they had been temporarily interred? *Held*, That within the meaning of Section 1 of the Act, the deceased wife of an employee may be regarded as a member of his family until given permanent burial.¹²

The Commission has expressed the view that the spirit and meaning of the law with relation to free passes for employees and their families will not be violated, if in the case of the

⁸ See note 4, *supra*.

⁹ *Ibid*.

¹⁰ Rule 95, Con. Rul. Bul. No. 4 (June 30, 1908).

¹¹ Rule 173, Con. Rul. Bul. No. 4 (May 4, 1909).

¹² Rule 174, Con. Rul. Bul. No. 4 (May 4, 1909).

death of an employee while in the service of a carrier free transportation be given to his remains, and to members of his family who might lawfully use free transportation if he were still alive, to the place of interment and return to their homes.¹³

The persons embraced within groups 1 and 2 of the above enumerated classes may use such transportation for their personal benefit or pleasure.

As to the persons enumerated in group 3, the right to use such transportation is limited to the occasions of actual employment in the designated capacity.

The persons enumerated in group 4 are transported free only in cases of dire necessity, as stated.

The above named classes of persons are the only ones to whom carriers may issue or give free interstate transportation, and the Commission has no authority to increase the list. Where the Congress has expressly enumerated special classes of persons or things that may be exempted and excepted from the operation of general provisions in a law, the Commission cannot enlarge excepted classes by mere construction to include in them persons or things not thus expressly named in the statute itself.¹⁴

§ 595. Common Carriers may grant Reduced-Rate Transportation to Persons entitled to Free Transportation.

Reduced-rate may be granted to such persons as are specified in the law as those to whom free transportation may be given.¹⁵

§ 596. Forms of Passes to Persons Eligible to receive Free Transportation.

Each pass issued must bear upon its face the name of some person belonging to a class named in Section 1 of the Act as eligible to receive free transportation. In addition to such

¹³ Rule 193, Con. Rul. Bul. No. 4 (June 14, 1909).

¹⁴ In the Matter of Free Transportation of Newspaper Employees on Special Newspaper Trains, 12 I. C. C. R. 16; see also Re Exchange Free Transportation, 12 I. C. C. R. 40 (1907).

¹⁵ Rule 208, Con. Rul. Bul. No. 4 (Oct. 12, 1906).

person so named a pass may also carry not to exceed a specified number of unnamed persons of any class eligible to receive free transportation; the number and the class to which such person belongs being specified upon the face of the pass. That is to say, passes in the following forms will be recognized by the Commission as legal:¹⁶

Pass John Smith, President, car, and five officers and employees of the X. Y. & Z. Railway.

Pass J. R. Barner and six linemen, foreman, and force of the Western Union Telegraph Company. Good only when traveling in connection with the construction, maintenance, or operation of the lines of the Western Union Telegraph Company on the right of way of the A. B. C. Railway Company.

Pass one extra messenger of the Southern Express Company when presented with letter signed by Superintendent, Assistant Superintendent, or Route Agent of said Express Company, authorizing use and giving name of person to be passed.

Pass John Smith, section foreman, and six employees of X. Y. Z. Railway.

Pass John Smith, wife, two sons, three daughters and two servants.

Pass Mrs. John Smith and daughter, account John Smith, Agent X. Y. Z. Railroad Company at Washington, D. C.

The name of the person presenting the pass must appear upon it. Passes intended to be used in the absence of the head of the family whose occupation makes the issuance of passes lawful must, in addition to the name of said head, show the name of the person using the same. For instance, a pass to be used by John Smith, his wife, or his daughter, separately, should read:

Pass John Smith, Mrs. John Smith and Miss Mary Smith, account C. & O. Agent at Richmond, Va.

Every pass to an officer or employee of a carrier other than the one issuing the pass, shall indicate the name and rank of the person to, or on behalf of whom, such pass is issued, as well as the name of the carrier employing him.¹⁷

§ 597. Interchange of authorized Passes or Franks by Common Carriers.

A common carrier subject to the Act to Regulate Commerce

¹⁶ See note 10, supra.

¹⁷ Ibid.

may lawfully interchange free passes for the use of their officers, agents, and employees and their families. The Act also provides that nothing shall be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employés, and their families, of telegraph, telephone and cable lines, and the officers, agents, employés and their families of other common carriers subject to the provisions of the Act.¹⁸ This applies to express companies subject to the Act.¹⁹

When a common carrier by water, other than an ocean carrier, not subject to the Act, united with a carrier by rail for the interstate transportation of passengers, partly by water and partly by rail, under a common control, management or arrangement for a continuous carriage shown by concurrence in tariff or tariffs duly published and filed with the Commission, such carriers may lawfully interchange transportation for their officers, agents, and employés.²⁰

§ 598. Free Transportation to Officers and Employés of Common Carriers and their Families and Household Effects.

¶ A. OFFICERS AND EMPLOYÉS.

The provision of the Act relative to the issuance of free tickets, free passes, free transportation, or free carriage of employés of carriers, apply only to persons who are actually in the service of the carriers and who devote substantially all of their time to the work or business of such carrier.²¹

The Commission does not construe the law as preventing a carrier from giving necessary free transportation to a person traveling over its line solely for the purpose of attending to the business of or performing a duty imposed upon the carrier.²²

The Commission will recognize any rail or water carrier filing a tariff, joint or local, with the Commission, as a carrier

¹⁸ See note 4, supra.

¹⁹ Rule 157, Con. Rul. Bul. No. 4 (April 6, 1909).

²⁰ Rule 196, Con. Rul. Bul. No. 4 (June 14, 1909).

²¹ See note 15, supra.

²² Ibid.

subject to the Act so far as the issuance of passes to its officers and employees may be concerned. Where a carrier has no tariff on file with the Commission, and does not acknowledge itself subject to the Commission's jurisdiction, the Commission will regard the issuance of passes to its officers or employees as unlawful, without, however, thereby passing upon the question of the jurisdiction of the Act over such carrier in so far as it may be necessary to assert such jurisdiction.²³

¶ B. FREE PASSES TO EX-EMPLOYEES.

Under the recent amendment to the antipass provision of Section 1: *Held*, That a pass may be issued to a bona fide ex-employee of any carrier subject to the Act, who is traveling for the purpose of entering the service of any such common carrier, whether such service has or has not previously been arranged for.²⁴

¶ C. FAMILIES OF OFFICERS AND EMPLOYEES.

The Act authorizes the giving of free transportation to the families of the employés of common carriers.²⁵ This does not include the families of local attorneys, surgeons, and others who are not regularly employed by the carriers.²⁶ Free transportation may lawfully be accorded to members of the family accompanying an ex-employee traveling for the purpose of entering the service of any common carrier subject to the Act.²⁷

The recent amendment to the Act of June 18, 1910, makes the term "families" include the widows during widowhood and the minor children during minority of persons who died while in the service of any common carrier.²⁸

¶ D. FREE TRANSPORTATION OF HOUSEHOLD EFFECTS OF AN EMPLOYEE.

The Commission does not construe the law as preventing

²³ See note 10, *supra*.

²⁴ Rule 102, Con. Rul. Bul. No. 4 (Oct. 13, 1908).

²⁵ See note 1, *supra*.

²⁶ See note 10, *supra*.

²⁷ Rule 158, Con. Rul. Bul. No. 4 (April 6, 1909).

²⁸ Section 1, Act (as amended June 18, 1910).

the carrier from giving free transportation over its line to the household and personal effects of an employé, who is required to move from one place to another at the instance of or in the interest of the carrier by which he is employed.²⁹

A carrier gave free transportation to an employee and his household effects to the point where he was to be employed and later dismissed him: *Held*, That the Commission cannot require the carrier to return the household effects free of charge to the point from which they were first moved.³⁰

¶ E. OFFICERS AND EMPLOYEES OF RAILROAD RECEIVER.

Upon inquiry from a receiver duly appointed by the court to manage the property and assets of a railroad company: *Held*, That officers and employees engaged under the receiver in the operation of the railroad occupy the same position under the antipass provision of the Act as do the officers and employees of any other railroad.³¹

§ 599. Penalty of Employé of Carrier who delivers his Pass to a person not Authorized to Receive it, where such Person uses the same.

See *Section 757, post*.

§ 600. Free Passes to Household Servants.

A household servant when traveling with a member of a family entitled to a pass, is included within the term "family" as used in the Act to Regulate Commerce.³²

§ 601. Free Transportation to Necessary Agents or "Care-takers" of certain Shipments of Property and of certain Classes of Passengers.

¶ A. CARETAKERS OF LIVE STOCK, POULTRY AND FRUIT.

Section 1 of the Act provides that free transportation may be

²⁹ See note 15, *supra*.

³⁰ Rule 109, Con. Rul. Bul. No. 4 (Nov. 10, 1908).

³¹ Rule 165, Con. Rul. Bul. No. 4 (April 12, 1909).

³² Rule 92, Con. Rul. Bul. No. 4 (June 29, 1908); Rule 95, Con. Rul. Bul. No. 4 (June 30, 1908).

furnished "to necessary caretakers of live stock, poultry, fruit." This provision in the statute is construed to mean necessary caretakers of live stock, poultry, or fruit that is loaded and ready for movement, or the movement of which is actually contracted for or that is actually in transit, and may include free or reduced-fare transportation for the return of such necessary caretakers. This transportation may be in the form of free pass or reduced fare transportation, but in any event it must be the same for all under like circumstances and must be published in the tariff governing the transportation of the commodity. Tariff may provide that caretakers sent out to return with shipment, that is arranged for or that is in transit, will be required to pay full fare going, and such fare will be refunded if the person so sent does return as actual caretaker of the shipment for which he is sent. But a tariff rule which provides that if a person goes over the line with the intention of purchasing live stock and returns within a certain time with a certain number of cars of live stock that carrier will refund to him the fare paid on the outgoing trip is improper and unlawful.³³

An employee of a produce company was granted a pass for the purpose of going to a point on the carrier's line and returning as caretaker of a carload of bananas. He was unable to secure a return shipment. *Held*, That the carrier must collect a full fare.³⁴

¶ B. CARETAKERS OF PERISHABLE VEGETABLES.

The Commission is of the opinion that the term "fruit" in this connection includes perishable vegetables when shipped under conditions that render caretakers "necessary."³⁵ It will be noted that the Commission has emphasized the word "necessary."

The tariffs of a carrier included a refrigeration service, under rates named therein, on perishable freight. Upon in-

³³ Rule 102, Con. Rul. Bul. No. 4 (Oct. 13, 1908).

³⁴ Rule 1, Con. Rul. Bul. No. 4 (Nov. 4, 1907).

³⁵ See note 33, *supra*.

quiry whether the shippers or their agents might have free transportation to inspect the receiving of the cars: *Held*, That it does not appear that they are necessary caretakers within the meaning of Section 1 of the Act.³⁶

¶ C. CARETAKERS OF MILK.

The amendment of June 18, 1910, permits the giving of free transportation to caretakers of milk.³⁷

¶ D. CARETAKERS OF NEWSPAPER COMPANIES.

The so-called *caretakers* of newspaper companies, whose duty it is to assort newspapers on special newspaper trains and to make them up into packages for delivery as the train arrives at the several points along the line of the run, may not lawfully be granted free transportation that is permissible under the Act to Regulate Commerce to caretakers of certain other kinds of traffic specifically enumerated in the Act.³⁸

¶ E. CARETAKERS FOR BEES IN HIVES.

Upon inquiry from a classification committee the Commission agreed that tariffs may lawfully provide for free transportation of caretaker of bees in hives, which may be included in the term "live stock."³⁹

¶ F. CARETAKERS OF LIVE FISH.

The Commission has expressed the opinion that the term "live stock" may include live fish when shipped under conditions that render caretakers "necessary."⁴⁰

¶ G. NECESSARY AGENTS OR "CARETAKERS" OF PROPERTY TRANSPORTED FOR UNITED STATES, STATE OR MUNICIPAL GOVERNMENTS.

Section 22 of the Act provides, "that nothing in this Act

³⁶ Rule 171, Con. Rul. Bul. No. 4 (May 4, 1909).

³⁷ Act, Section 1 (as amended June 18, 1910).

³⁸ See note 14, *supra*.

³⁹ Rule 112, Con. Rul. Bul. No. 4 (Nov. 12, 1908).

⁴⁰ See note 20, *supra*.

shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal government, * * * and the necessary agents employed in such transportation."

The Commission has held, that the words "and necessary agents employed in such transportation" modify the entire preceding part of the section, and that the necessary caretakers of property transported for the United States, State, or municipal governments, may legally be carried free or at reduced rates by carriers subject to the Act. The words "necessary agents" as used in this section are interpreted to mean those persons necessary to the safe and proper care of the property during the period of transportation, and may not properly be extended to cover any persons other than those who actually accompany such property and who are actually necessary to its care.⁴¹

¶ H. NECESSARY AGENTS OR CARETAKERS OF PROPERTY TRANSPORTED FOR CHARITABLE PURPOSES AND OF DESTITUTE AND HOMELESS PERSONS TRANSPORTED BY CHARITABLE SOCIETIES.

Section 22 of the Act provides, "That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for * * * charitable purposes * * * or the free carriage of destitute or homeless persons transported by charitable societies and the necessary agents employed in such transportation."

The holding of the Commission under *Paragraph G, supra*, is equally and fully applicable here.⁴²

¶ I. NECESSARY AGENTS AND CARETAKERS OF PROPERTY TRANSPORTED TO OR FROM FAIRS AND EXPOSITIONS FOR EXHIBITION THEREAT.

Section 22 of the Act provides, "That nothing in this Act shall prevent the carriage, storage, or handling of property

⁴¹ Rule 150, Con. Rul. Bul. No. 4 (Feb. 11, 1909).

⁴² *Ibid*.

free or at reduced rates * * * from fairs and expositions for exhibition thereat * * * and the necessary agents employed in such transportation.”

The holding of the Commission under *Paragraph G, supra*, is equally and fully applicable here.⁴³

¶ J. MANNER IN WHICH PASSES TO CARETAKERS MUST BE ISSUED.

Passes to caretakers must be in the form of trip passes limited to the journey on which the person to whom the pass runs acts as a caretaker. It may also cover the return journey. Annual or time passes to caretakers are unlawful.⁴⁴

¶ K. CROSS REFERENCES IN RAILROAD AND EXPRESS TARIFFS.

When an express company provides in its tariff for free transportation for caretakers in charge of live stock, poultry, or fruit, and the railroad company over whose lines such express company operates provides in its tariff that such caretakers may be permitted to ride in passenger car; the tariff of the express company and that of the railroad company must give reference to each other.⁴⁵

¶ L. RETURN OF CARETAKERS.

A shipment of live stock moved between two points over two connecting lines. Upon inquiry by the delivering road, which had a through direct line between the two points, it was *held*, That it cannot free of charge return the caretakers over its own direct line through to the point of origin of the shipment.⁴⁶

§ 602. Free Transportation of Shippers and Dealers.

The free transportation of shippers and dealers between interstate points on account of interstate freight traffic furnished to the carrier is unlawful.⁴⁷

⁴³ Rule 150, Con. Rul. Bul. No. 4 (Feb. 11, 1909).

⁴⁴ Rule 37, Con. Rul. Bul. No. 4 (Feb. 4, 1908).

⁴⁵ Rule 179, Con. Rul. Bul. No. 4 (May 10, 1909).

⁴⁶ Rule 189, Con. Rul. Bul. No. 4 (June 14, 1909).

⁴⁷ *Milk Producers Protective Association v. D. L. & W. Rd. Co.*, 17 I. C. C. R. 92.

§ 603. Free and Reduced Rate Transportation to Clergymen and Persons engaged in Charitable Work and Their Families.

¶ A. IN GENERAL.

The Act to Regulate Commerce provided that carriers may lawfully give free transportation to ministers of religion, inmates of hospitals and charitable and eleemosynary institutions.⁴⁸

A clergyman does not lose his ministerial standing by reason of the fact that he leaves the pastorate for some other field of religious activity. A minister who becomes an editor of a church paper, instructor in a theological seminary, financial agent for a church or other religious institution, or who engages in other work which may fairly be regarded as religious in character; and who does not abandon his ministerial work, may legally be accorded special transportation privileges.⁴⁹

The Commission said: "The courts have been consistently liberal in giving construction to the words 'charitable' and 'eleemosynary,' and we see no reason for being unduly narrow in interpreting these words as found in the Act. A charitable institution is one which is administered in the public interest, and in which the element of private gain is wanting. This definition is broad enough to include hospitals, almshouses, orphanages, asylums, and missionary societies. This enumeration is not intended to be exclusive—it is only representative. It is important to note that such an institution does not necessarily lose its charitable character by reason of the fact that it is under the management of a particular denomination or sect, or because a charge is collected from some or all of those who enjoy its privileges. It is only necessary that it be conducted in the public interest and not for private gain."⁵⁰

Railroads have a right to grant special privileges to religious teachers as an act of charity.⁵¹

⁴⁸ See note 7, *supra*.

⁴⁹ In the Matter of Passes to Clergymen and persons engaged in Charitable Work, 15 I. C. C. R. 45.

⁵⁰ *Ibid*.

⁵¹ Re Religious Teachers, 1 I. C. R. 21.

¶ B. FAMILIES OF MINISTERS NOT ENTITLED TO FREE
TRANSPORTATION.

The provisions of the Act relative to the issuance of free or reduced fare transportation to ministers of religion do not apply to or include members of the families of ministers of religion.⁵²

§ 604. Free Transportation of Railway-Mail Service Employés.

The Commission construes the Act, so far as it relates to railway-mail service employés, as giving such employés the right to receive free transportation when on duty in their cars, or when traveling under orders from a superior officer.⁵³

The Commission, however, in making this rule stated that it does not undertake to say how far this portion of the Act to Regulate Commerce is modified or controlled as regards railway-mail service employees by other statutes or by contract between carriers and the Postoffice Department.

**§ 605. Free Transportation to Officers and Employés of
Subsidiary Corporations.**

Officers or employés of subsidiary corporations, which corporations engage in any employment for, or render any service to others than the carrier, do not come within the designated classes to whom free transportation may be given. However, the officers or employés of such subsidiary corporations may be granted free transportation when engaged on the business of the carrier.⁵⁴

**§ 606. Exchange of Free Transportation with Telegraph,
Telephone and Cable Companies.**

The Act to Regulate Commerce (*as amended June 18, 1910*) permits the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employés, and their families, of telegraph, telephone and cable employés

⁵² See note 15, *supra*.

⁵³ See note 10, *supra*.

⁵⁴ See note 10, *supra*.

and the officers, agents, employés and their families of other common carriers, subject to the provisions of the Act.⁵⁵

§ 607. Free and Reduced-Rate Transportation to Contractors and Men employed in the Construction and Improvement of Line of Carriers.

The Commission does not construe the law as preventing a carrier from giving free or reduced-rate carriage over its line to contractors for material, supplies, and men for use in construction, improvement, or renewal work on the line of that carrier; provided such arrangements for free or reduced-rate carriage are made a part of the specifications upon which the contract is based and of the contract itself.⁵⁹

§ 608. Reduced-Rate Transportation for Federal Troops and Marines.

The Commission announced that it is of the opinion that carriers, either by contract or bid or other arrangement with the War Department, may lawfully make special rates or fares for the movement of Federal troops when moved under orders and at the expense of the United States Government, and that the rates of fares so made need not be posted or filed with the Commission.⁶⁰

The lawfully published rates or fares for the transportation of the general public, in the opinion of the Commission, are to be regarded, however, as the maximum rates and fares that may lawfully be charged the Government for the movement of Federal troops.⁶¹

This ruling also governs similar transportation for the Naval and Marine services.

§ 609. Free Transportation to Officers of the Government, the Army and Navy, and their Families.

The provisions of the Act relative to the issuance of free or

⁵⁵ Act, Section 1 (as amended June 18, 1910).

⁵⁹ Rule 208, Con. Rul. Bul. No. 4 (Oct. 12, 1906).

⁶⁰ Rule 218, Con. Rul. Bul. No. 4 (May 27, 1907).

⁶¹ *Ibid.*

reduced-fare transportation do not admit of including therein officers of the Government, the Army, or the Navy, or members of their families.⁶²

§ 610. Free Transportation to Officers and Employés of News Companies.

The so-called *caretakers* of newspaper companies whose duty is to assort newspapers on special newspaper trains and to make them up into packages for delivery as train arrives at the several points along the line of the run, may not lawfully be granted free transportation, that is permissible under the Act to Regulate Commerce to caretakers of certain other kinds of traffic specially enumerated in the Act.⁶³

A commodity rate cannot be applied to the transportation of passengers or a passenger rate to the transportation of a commodity.⁶⁴

Therefore newspaper employees cannot lawfully be carried on special newspaper trains under a commodity rate established for the carriage of newspapers, or at any rate other than one specified in a regularly published schedule of passenger rates.⁶⁵

Officers and employés of news companies are not included within the designated classes to whom free transportation may lawfully be given.⁶⁶

§ 611. Free Transportation to Public Officials.

The defendant issued passes entitling the holders to free transportation over the lines of its system extending into the States of Maine, New Hampshire, Vermont and Massachusetts; there were several classes of persons who received the passes, among them, gentlemen long eminent in public service, higher officers of the States, prominent officials of the United States, members of the Legislature Committees of the above-named

⁶² See note 15, *supra*.

⁶³ See note 14, *supra*.

⁶⁴ *Ibid*.

⁶⁵ See note 14, *supra*.

⁶⁶ See note 10, *supra*.

States and persons whose good will was claimed to be important to the defendant: *Held*, That the giving of free transportation to such persons was a violation of the Act to Regulate Commerce.

Upon the facts found in this case, *Further held*, That the second section of the Act prohibits the giving of free transportation to the persons embraced within the above-named classes; that a carrier is bound to charge equally to all persons regardless of their relative individual standing in the community; that the words, "under substantially similar circumstances and conditions" relate to the nature and character of the service rendered by the carrier, and not to the official, social or business position of the passenger; that Section 22 of the Act is exceptive in character and only applies to the persons and subjects expressly specified therein.⁶⁷

The action of the defendant in granting to members of the City Council of New Orleans and the Clerk of that body, on account of their official positions, free transportation as passengers over all or some portion of its interstate lines, violates the Act to Regulate Commerce and is unlawful.⁶⁸

At the date of the above decisions such transportation was unlawful under the discrimination clause of the Statute; since the Hepburn Amendment of 1906, however, the giving of free or reduced-fare transportation is made unlawful by express prohibition.

§ 612. Reduced-Rate Transportation to Commercial Travelers.

A sale of mileage tickets to commercial travelers at a certain rate, and refusal to sell to other passengers except at a higher rate, is an unjust discrimination, within the meaning of the Act.⁶⁹

A release of liability by commercial travelers to the rail-

⁶⁷ In the Matter of Free Transportation by B. & M. R. Co., 3 I. C. R. 717.

⁶⁸ *Harvey v. L. & N. R. Co.* (1892), 5 I. C. C. R. 153; 2 I. C. R. 622; 3 I. C. R. 793; *Case of B. & M. R. Co.*, *supra*, approved and followed.

⁶⁹ *Larrison v. C. & G. T. R. Co.* (1887), 1 I. C. C. R. 147; 1 I. C. R. 369.

road company does not constitute a good and sufficient consideration for such discrimination. Nor does the fact that they may influence business in favor of the road, etc.⁷⁰

Persons belonging to the class known as commercial travelers are not privileged to ride over railroads at lower rates than other persons, and to make a difference in this respect is unjust discrimination.⁷¹

This is true whether the tickets issued are mileage tickets or in some other form.⁷² Commercial travelers are not entitled to mileage tickets at lower prices than they are sold to the public generally.⁷³

§ 613. Reduced-Rate Transportation to Immigrants.

The railroad lines extending from New York City made a special rate for immigrants as a class and declined to grant the same rate to other persons. This special class of persons were given accommodations essentially different to those provided for others, in cars specially set apart for their use, and which were commonly made up into trains by themselves and returned to the seaboard from the western points empty. The Commission held that under the circumstances the rate in question was neither illegal nor wrongful and that the carriers were not guilty of unjust discrimination.⁷⁴

Regardless of the nature of the service rendered, it would seem that under a liberal construction of that portion of the Act which permits the giving of free transportation for charitable purposes,⁷⁵ such arrangement would be lawful.

§ 614. Free Transportation to Land Explorers and Settlers.

The Commission has decided that land explorers and settlers are not entitled to lower rates than the general public.

⁷⁰ *Larrison v. C. & G. T. R. Co.* (1887), 1 I. C. C. R. 147; 1 I. C. R. 369.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Associated Wholesale Grocers of St. Louis v. Missouri Pacific R. Co.* (1887), 1 I. C. C. R. 156; 1 I. C. R. 393.

⁷⁴ *Savery & Co. v. N. Y. C. & H. R. R. Co.* (1888), 2 I. C. R. 210; 2 I. C. C. R. 338.

⁷⁵ *Ibid.*

The fact that it is very desirable for the common carrier to make sale of its lands is not a reason for discriminating in favor of explorers and settlers; the same reason would apply in case a company should desire to stimulate its freight traffic or any other branch of its business by the use of reduced rates or free transportation. The claim that the settlement of the Western Territories should be promoted by special facilities of transportation to immigrants, is a claim proper to be addressed to the legislative body, but not for consideration of the Commission in interpreting the statute; and moreover, the company is able, by excursion rates open to all, and by making allowances upon the price charged for its land of part or all of the cost of tickets, to perhaps accomplish the desired object to a sufficient extent without violating the law. The means, occupation or purpose of the parties are not proper considerations upon which to found discrimination among them.⁷⁶

At the date of the above decision such transportation was unlawful as in violation of the discrimination section of the Act; now such transportation is expressly forbidden by the amended statute.

§ 615. Free Transportation to Land and Immigration Agents.

Land and immigration agents, unless they are bona fide and actual employees of carriers subject to the Act to Regulate Commerce are not within the excepted classes specified in that statute; and providing transportation for such agents free or at reduced rates over the lines of such carrier is, and since the Act was originally passed has been unlawful.⁷⁷

§ 616. Free Transportation to Officers and Employés of Carriers not subject to the Act to Regulate Commerce.

¶ A. IN GENERAL.

Officers and employés of carriers not subject to the Act

⁷⁶ *Smith v. Northern Pacific R. Co.* (1887), 1 I. C. C. R. 208; 1 I. C. R. 611.

⁷⁷ *Complaint of Illinois Central R. R. Co.*, 12 I. C. C. R. 8; Rule 208, Con. Rul. Bul. No. 4 (Oct. 12, 1906).

to Regulate Commerce cannot lawfully be given free or reduced-rate transportation.⁷⁸

Where a carrier has no tariffs on file with the Commission, and does not acknowledge itself subject to the Commission's jurisdiction, the Commission will regard the issuance of passes to its officers or employés as unlawful, without, however, thereby passing upon the question of the jurisdiction of the Act over such carriers in so far as it may be necessary to assert such jurisdiction.⁷⁹

¶ B. STEAMSHIP LINES.

Officers and agents of steamship lines not subject to the Act cannot be lawfully given free transportation.⁸⁰

¶ C. TRANSFER, OMNIBUS OR BAGGAGE COMPANIES AND STAGE LINES.

In the decision of March 25, 1907, on the petition of the Frank Parmelee Company, the Commission held that a carrier subject to the Act to Regulate Commerce cannot lawfully give free transportation to the officers, agents, or employees of an omnibus or baggage express company, except as authorized in the Act, for baggage agents who meet passenger trains at some point near the larger cities and go through the trains to arrange for the transfer of passengers and their baggage.⁸¹

In the case referred to, the petitioner, the Frank Parmelee Company, being held not to be a common carrier subject to the Act to Regulate Commerce, could doubtless give free transportation on its omnibuses and baggage express wagons to whomsoever it wished, but the common carriers subject to the jurisdiction of the Act could not lawfully grant free transportation to the officers, agents or employés of the petitioner.⁸²

⁷⁸ See note 10, *supra*.

⁷⁹ *Ibid*.

⁸⁰ *Ibid*.

⁸¹ Rule 66, Tariff Circular 15-A.

⁸² In the Matter of Right of Railroad Companies to Exchange Free Transportation with Local Transfer and Baggage Express Companies, 12 I. C. C. R. 40.

§ 617. Free Transportation of Employés of Express Companies over Railroads.

A railway company may lawfully transport the men of an express company without reference to any tariff provision when employed in the business of the express company upon the line of the railway itself.

A railway company may not lawfully transport men of an express company when employed in the business of that company at points not on the line of railway.⁸³

§ 618. Reduced-Fare Transportation for the Deportation of Chinese not Permissible.

Special fares cannot lawfully be accorded for the deportation of Chinese to the ports for deportation even though the expense is paid by the Government.⁸⁴

§ 619. Free Transportation of Man taking Measurements of Employés of Carriers for Uniforms.

A carrier requires that certain of its employees shall wear uniforms made from goods of texture and color, and according to specifications prescribed by the carrier. The carrier employs a certain firm to make such uniforms for any and all of its employees at agreed-upon prices. A man is sent over the line to take the measures and orders of employé's for such uniforms. The employé generally gives an order on the carrier for the amount of his order, which amount the carrier deducts in whole or in part from wages due the employee and the carrier pays the firm for the uniform.

The Commission was asked if the carrier may lawfully continue granting free transportation to man so taking measures and orders for uniforms: *Held*, That having its employees properly uniformed is a duty of the carrier in the interest of the carrier and of its patrons, and therefore the man so sent over its lines for the purpose named is, for that purpose and while engaged in that work, performing a duty devolving upon

⁸³ In the Matter of Contracts of Express Companies for the Free Transportation of their Men and Material over Railroads, 16 I. C. C. R. 246.

⁸⁴ Rule 107, Con. Rul. Bul. No. 4 (Nov. 10, 1908).

the carrier and may lawfully be given free transportation to the extent necessary for the performance of that duty, provided he does not in the same connection receive any orders from or sell any goods to persons who are not bona fide employees of that carrier.⁸⁵

§ 620. Miscellaneous Persons not lawfully entitled to Free Transportation.

Officers and employees of surety companies cannot be given free transportation.⁸⁶

Free transportation issued in the form of an annual pass to a person not in the regular and stated service of a carrier nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in its way what business he conveniently could; *Held*, To be illegal.⁸⁷

Upon inquiry from a car-lighting company it was *Held*, That its experts for the testing and observation of the performance of its lights on trains are not employees of the carrier, and are not therefore entitled to free transportation.⁸⁸

Neither may free transportation be granted to representatives of correspondence schools, agents of accident or life insurance companies, agents of oil or lubricating companies, etc.⁸⁹

§ 621. Excursion, Commutation and Mileage Tickets and Other Special Passenger Arrangements.

For consideration, see *Section 562, ante*.

§ 622. Party-Rate Tickets.

For consideration, see *Section 563, ante*.

§ 623. Use of State Passes in Interstate Journeys.

Passes granted to State railroad commissioners cannot lawfully be used in interstate journeys.⁹⁰

⁸⁵ Rule 134; Con. Rul. Bul. No. 4 (Jan. 7, 1909).

⁸⁶ See note 10, *supra*.

⁸⁷ *Slater v. Northern Pac. Rd. Co.* (1888), 2 I. C. C. R. 359; 2 I. C. R. 243.

⁸⁸ Rule 169, Con. Rul. Bul. No. 4 (April 13, 1909).

⁸⁹ See note 59, *supra*.

⁹⁰ Rule 35, Con. Rul. Bul. No. 4 (Dec. 3, 1908).

§ 624. Contracts Entered into prior to the Passage of the Act for Free Transportation based upon Moneyed or other Valuable Considerations.

See *Section 250, ante*.

§ 625. Validity of Stipulations in Railway Passes against Liability of Carrier for Injury.

The Supreme Court of the United States has sustained the validity of stipulations in railway passes against liability for injury, where the parties accept the passes with knowledge of such conditions.

A stipulation in a railway pass that the railway company shall not be liable to the user "under any circumstances, whether of negligence of agents or otherwise, for any injury to the person," violates no rule of public policy, and relieves the company from liability for personal injuries resulting from the ordinary negligence of its employees to one riding on the pass, who has accepted it with knowledge of its conditions.⁹¹

A stipulation in a free railway pass, requiring the user to assume the risk of injury due to the carrier's negligence, is binding on a person accepting the privilege, although notice of such stipulation may not have been brought home to her.⁹²

§ 626. Destruction by Carriers of the Records or Memoranda Relating to Passes.

The Commission has enjoined carriers against the destruction of records or memoranda touching the issuance of passes, and has ordered that the passes themselves coming into the hands of the carriers after use, must, until further order of the Commission be retained for a period of not less than five years.⁹³

§ 627. Unjust Discrimination in granting Free or Reduced-Rate Transportation.

See *Section 379, Paragraph E, ante*.

⁹¹ Northern Pacific Ry. Co. v. Adams et al., 192 U. S. 440; 48 L. ed. 513, 24 Sup. Ct. 408.

⁹² Boering v. Chesapeake Beach R. Co., 193 U. S. 442; 48 L. ed. 742, 24 Sup. Ct. 515.

⁹³ See note 10, supra.

CHAPTER XXXIV.

PASSENGER TARIFFS OR FARE SCHEDULES.

SECTION

628. Publication of Fares and Charges for Transportation.
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- 652. All State or other Fares used for Interstate Movements must be Posted and Filed.
- 653. All Local Tariffs should have I. C. C. Numbers and be Posted and Filed.
- 654. Fares governing Transportation for the United States Government need not be Published.
- 655. Rates of the Pullman Company.
- 656. Tariffs covering Mileage, Commutation, Excursion and Round-Trip Fares and Tickets.
- 657. Maxima Fares not Specific Fares.
- 658. Tariffs governing Use of Party-Fare Tickets.
- 659. Side Trips not specifically shown in a Through Tariff.
- 660. Concurrence by Carriers in Tariffs issued and filed by another Carrier or its Agent.
- 661. Letter of Transmittal accompanying Tariffs filed with the Commission.
- 662. Tariffs governing Movement of Passengers to and from Foreign Countries.

In considering the subject of passenger tariffs it should be noted that all the general principles applicable to freight tariffs are equally applicable to passenger tariffs and may be applied by analogy to such.

§ 628. Publication of Fares and Charges for Transportation.

¶ A. MANDATE OF THE ACT AS TO PUBLICATION OF FARES.

The Act to Regulate Commerce requires that every common carrier subject to its provisions shall publish schedules showing all the fares and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, or by water when a through route and joint rate have been established.¹

If no joint rate over the through route has been established, the several carriers in such through route shall print, as aforesaid, the separately established fares and charges applied to the through transportation.²

¹ Act to Regulate Commerce. Section 6.

² Ibid.

¶ B. JOINT TARIFFS MUST SPECIFY NAMES OF PARTICIPATING CARRIERS.

The Act requires the names of the several carriers which are parties to any joint tariff to be specified therein.³

§ 629. Filing Tariffs, Supplements, Concurrences, etc., with the Interstate Commerce Commission.

¶ A. MANDATE OF THE ACT AS TO FILING OF FARE SCHEDULES WITH THE COMMISSION.

The Act to Regulate Commerce provides that every common carrier subject to its provisions shall file with the Commission and print and keep open to public inspection, schedules showing all the fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, or by water when a through route and joint fare have been established.⁴

If no joint fare over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established fares and charges applied to the through transportation.⁵

¶ B. CONCURRENCE OF PARTICIPATING CARRIERS.

The concurrence of every carrier participating in the tariffs as stated in the preceding paragraph must be on file with the Commission or accompany the tariff or supplement.⁶ See *Section 661, post*.

¶ C. FILING BY PROPER OFFICER OR DESIGNATED AGENT.

Tariffs and supplements thereto shall be filed with the Commission by proper officer of the carrier or by an agent designated to perform that duty.⁷

³ Act to Regulate Commerce. Section 6.

⁴ Ibid.

⁵ Ibid.

⁶ Rule 41, Tariff Circular 17-A.

⁷ Ibid.

¶ D. TWO COPIES OF ALL TARIFFS MUST BE FILED WITH THE COMMISSION.

Common carriers and agents are directed, in filing schedules in compliance with the statute, to transmit two (2) copies of each tariff, supplement, or other schedule of fares or regulations, for use of the Commission, both copies to be included in one package and under one letter of transmittal.⁸

¶ E. HOW TARIFFS FILED WITH THE COMMISSION MUST BE ADDRESSED.

All tariffs sent for filing with the Interstate Commerce Commission must be addressed "Interstate Commerce Commission, Bureau of Tariffs, Washington, D. C."⁹

¶ F. TARIFFS MUST BE DELIVERED TO THE COMMISSION FREE FROM ALL CHARGES OR CLAIMS FOR POSTAGE.

No tariff or supplement will be accepted by the Commission for filing unless it is delivered to the Commission, free from all charges or claims for postage.¹⁰

¶ G. TARIFFS MUST BE DELIVERED TO THE COMMISSION WITHIN FULL STATUTORY TIME.

All tariffs or supplements must be delivered to the Commission within the full thirty days required by law before the date upon which such tariffs or supplements are stated to be effective. No consideration will be given to or for the time during which a tariff or supplement may be held at the Post Office Department because of insufficient postage.¹¹

For tariffs and supplements issued on short notice under special permission of the Commission and short time excursion tariffs, full thirty days' notice is not required, but literal compliance with the requirements for notice of such tariffs or in any permission granted by the Commission will be exacted and in accord with the policy and practice above outlined.¹²

⁸ Rule 41, Tariff Circular 17-A.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¶ H. DISPOSITION OF TARIFFS RECEIVED BY COMMISSION TOO
LATE TO GIVE STATUTORY NOTICE.

A tariff or a supplement that is received by the Commission too late to give the Commission the full thirty days' notice required by law will be returned to sender, and correction of the neglect or omission can not be made which takes into account any time elapsing between the date upon which such tariff or supplement was received and the date of attempted correction.¹³ In other words, when a tariff or a supplement is issued and as to which the Commission is not given the statutory notice, it is as if it had not been issued, and full statutory notice must be given of any reissue thereof.¹⁴

§ 630. Posting of Tariffs or Fare Schedules.

¶ A. MANDATE OF THE ACT AS TO POSTING OF FARE SCHEDULES.

The Act to Regulate Commerce requires that every common carrier subject to its provisions shall keep open to public inspection schedules showing all the fares and charges for transportation on its own route and between points on its own route and points on the route of any other carrier by railroad, or by water when a through route and joint rate have been established.¹⁵

If no joint rate over the through route has been established, the several carriers in such through route shall keep open to public inspection, as aforesaid, the separately established fares and charges applicable to the through transportation.¹⁶

Copies of such schedules are required by the Act to be kept posted for the use of the public in two public and conspicuous places in every depot, station or office of such carrier where passengers are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.¹⁷

¹³ Rule 41, Tariff Circular 17-A.

¹⁴ Ibid.

¹⁵ See note 1, *supra*.

¹⁶ Ibid.

¹⁷ Ibid.

The above provisions apply to all traffic, transportation and facilities subject to the Act.¹⁸

¶ B. RULES GOVERNING THE POSTING OF TARIFFS AT STATIONS.

See *Section 460, ante*, for full consideration.

§ 631. Jurisdiction of the Interstate Commerce Commission over the Publication, Posting and Filing of Tariffs or Fare Schedules.

See *Section 459, ante*, for full consideration.

§ 632. Notice required for Publication of Fares and Changes therein.

¶ A. STATUTORY NOTICE.

Section 6 of the Act to Regulate Commerce as changed by the Hepburn Amendment of 1906, provides that:

“No changes shall be made in the fares and charges, or joint fares and charges, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days’ notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule *then in force* and the time when the changed fares or charges will go into effect; and the proposed changes shall be shown by *printing new schedules*, or shall be plainly indicated upon the schedule in force at the time and kept open to public inspection.”

¶ B. POWER OF COMMISSION TO ALLOW CHANGES ON LESS THAN STATUTORY NOTICE.

The Act authorizes the Commission in its discretion and for good cause shown to allow changes upon less than thirty days’ notice, either in particular instances or by a general order applicable to special or peculiar circumstances and conditions.¹⁹

The Commission in pursuance of this authority has not only permitted changes in fares on less than statutory notice in par-

¹⁸ Rule 41, Tariff Circular 17-A.

¹⁹ *Ibid.*

ticular instances, but has issued general orders applicable to special conditions and circumstances, as will be noted from the following paragraphs and elsewhere.

§ 633. Carriers prohibited from engaging in Transportation subject to the Act to Regulate Commerce unless they file and publish Fares and Charges thereon.

No carrier is permitted to engage in the transportation of passengers, as defined by the Act, unless the fares and charges upon which the same is transported by said carrier have been filed and published in accordance with the provisions of the Act.²⁰

§ 634. Different Kinds of Passenger Tariffs defined.

¶ A. JOINT TARIFFS.

Joint tariffs are those which contain or are made up from fares that extend over the lines of two or more carriers and that are made by agreement between such carriers.²¹ They apply to traffic between points on the lines of two or more carriers.²²

¶ B. LOCAL TARIFFS.

Local tariffs apply to traffic between points on the lines of the issuing carrier.²³

¶ C. INTERDIVISION TARIFFS.

Interdivision tariffs apply only to traffic between points on different divisions of the lines of the issuing carrier, except that under proper concurrences, shown in the tariff, interdivision fares may be included to and from points on directly connecting subsidiary lines. When this is done, the title of the tariff must be "Interdivision tariff of Ry. and its subsidiary lines," and each such subsidiary line must be shown in the list of participating carriers, together with the form and

²⁰ Act to Regulate Commerce. Section 6.

²¹ Tariff Circular 17-A.

²² Rule 29, Tariff Circular 17-A.

²³ Ibid.

number of its concurrence.²⁴ The use of interdivision tariffs is optional with carriers.²⁵

¶ D. BASING TARIFFS.

Basing tariffs contain fares to or from a certain specified basing point or points where no specific through or joint fare exists, together with definite rules and regulations as to the use and application of such basing fares.²⁶

§ 635. Tariffs must be printed.

The statute requires that all schedules of fares shall be plainly printed in large type.²⁷

All passenger tariffs must be printed on hard calendered paper of good quality from type of size not less than 6-point full face. Stereotype, planograph, or other printing-press process may be used. Alterations in writing or erasures must not be made in tariffs before filing. Reproductions by hectograph or similar process, typewritten sheets, or proof sheets must not be used for posting or filing except in preparation of tariffs covering excursion fares that are effective for not exceeding ten consecutive selling dates or for excursions limited to thirty days or less.²⁸

§ 636. Form and Size of Passenger Tariffs.

¶ A. JOINT AND BASING TARIFFS.

Joint and basing tariffs must be in book, sheet, or pamphlet form, and of size 8 by 11 inches. Loose-leaf plan may be used so that changes can be made by reprinting and inserting a single leaf.²⁹

¶ B. LOCAL TARIFFS.

Local tariffs may be in book form, not larger than 8 by 11

²⁴ Rule 29, Tariff Circular 17-A.

²⁵ Ibid.

²⁶ Ibid.

²⁷ See note 20, *supra*.

²⁸ Rule 28, Tariff Circular 17-A.

²⁹ Rule 30, Tariff Circular 17-A.

inches or in single-sheet form of size desired by the issuing carrier.³⁰

Local tariffs may be in one or more books or pamphlets and must show the exact fare from each point to each other on the lines of the issuing carrier. Fares to and from newly established points may be shown in supplement to tariff as "same as to or from next more distant point to or from which fare is shown in tariff," or "same as to nearest point to or from which fare is shown in tariff," or by showing fare to or from a nearby point or junction and providing that fares will be made up on that combination or base. If desired, certain of the fares which appear in local tariffs may be repeated in interdivision or joint tariffs under specific provision that as shown in such interdivision or joint tariff they may be used only for basing or through fare construction purposes, and may not be used as local fares.³¹

Loose-leaf plan may be used so that changes can be made by reprinting and inserting a single leaf.³²

¶ C. INTERDIVISION TARIFFS.

Interdivision tariffs may be in book form, not larger than 8 by 11 inches, or in single-leaf form of size desired by the issuing carrier. Loose-leaf plan may be used so that changes can be made by reprinting and inserting a single leaf.³³

Interdivision tariffs shall show:³⁴

(a) The exact fares between each point on one division and each point on the other division or divisions to which the tariff applies; or

(b) The exact fares between each point on a division and the principal points on the other division or divisions to which the tariff applies, together with explicit rules and bases from which to determine the fares to and from each of the less important points on the division or divisions to which the tariff applies and which are not named in the tariff.

³⁰ Rule 30, Tariff Circular 17-A.

³¹ Rule 31, Tariff Circular 17-A.

³² See note 29, *supra*.

³³ *Ibid*.

³⁴ Rule 32, Tariff Circular 17-A.

§ 637. Information to be shown on the Title-Page of every Passenger Tariff.

The Commission has ruled that the title-page of every tariff shall show:³⁵

¶ A. NAME OF CARRIER OR AGENT.

Name of issuing carrier, carriers, or agent.³⁶

¶ B. I. C. C. NUMBER AND CANCELLATIONS.

I. C. C. number of tariff in bold type on upper right-hand corner, and immediately thereunder, in smaller type, the I. C. C. number or numbers of tariffs and supplements canceled thereby. If, however, the number of canceled tariffs is so large as to render it impracticable to thus enter them, they must be shown immediately following table of contents, and specific reference to such list must be entered on title-page immediately under the number of the tariff. Serial numbers of carrier may, if desired, be entered below the upper marginal line of the title-page. Separate serial I. C. C. numbers will be used for freight and passenger tariffs.³⁷

¶ C. KIND OF TARIFF.

Whether tariff is local, interdivision, basing, or joint.³⁸

¶ D. TERRITORY.

The territory or points from and to which the tariff applies, briefly stated.³⁹

¶ E. DATES.

Date of issue and date effective.⁴⁰

¶ F. EXPIRATION NOTICE.

Any tariff may be changed on statutory notice of thirty days, or under special permission from the Commission, upon shorter

³⁵ Rule 33, Tariff Circular 17-A.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

notice. Therefore, a provision in a tariff that the tariff, or any part of it, will expire upon a given date, is not a guaranty that the tariff, or such part of it, will remain effective until that date. The Commission considers such expiration notices undesirable, as many complications have arisen through their being overlooked. Such provision, if used, must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way.⁴¹ On such tariffs the term "Expires", unless sooner canceled, changed, or extended, must be used."⁴²

¶ G. NOTICE OF SUPPLEMENTS.

On the upper left-hand corner (excepting tariffs issued in loose-leaf form, and tariffs containing round-trip excursion fares) the words: "Only one supplement to this tariff may be in effect at any time." On tariffs issued in loose-leaf form and on tariffs containing round-trip excursion fares, the words: "No supplement will be issued to this tariff except for the purpose of canceling the tariff."⁴³

On a tariff which provides for supervision and restoration of rail-and-water fares, the following exception should be made in connection with the above notations: "except as provided for in rule [*or item*] page, of this tariff."⁴⁴

¶ H. STATUTORY NOTICE OR AUTHORITY FOR SHORTER NOTICE MUST BE SHOWN.

On a tariff which provides for suspension and restoration of rail-and-water rates, the following exception should be made in connection with the above notations: "except as provided for in rule [*or item*], page, of this tariff."⁴⁵

The Act to Regulate Commerce requires that all changes in fares, or in rules that affect fares, shall be filed with the Commission at least thirty days before the date upon which they

⁴¹ Rule 33, Tariff Circular 17-A.

⁴² See note 34, *supra*.

⁴³ See note 35, *supra*.

⁴⁴ *Ibid*.

⁴⁵ *Ibid*.

are to become effective. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not the statutory notice has been given. The title-page of every tariff or supplement must show full thirty days' notice, except as otherwise provided.⁴⁶

On every tariff or supplement that is issued on less than thirty days' notice by permission from or order or regulation of the Commission, notation that it is issued under special permission or order of the Interstate Commerce Commission, No. . . . , of [date] or by authority of Rule , Tariff Circular 17-A, or by authority of decision of the Commission in case No.

¶ I. NOTATION ON EXCURSION TARIFF.

On every excursion tariff issued notation, "Issued under authority of Rule 52, Tariff Circular 17-A."⁴⁷

¶ J. OFFICER ISSUING.

Name, title, and address of officer by whom tariff is issued.⁴⁸

§ 638. Information that Passenger Tariffs shall contain.

The Commission has rules that passenger tariffs shall contain the following information and in the order named:

¶ A. TABLE OF CONTENTS.

A full and complete statement, in alphabetical order, of the exact location where information under general headings, by subjects, will be found, specifying page or item numbers. If a tariff contains so small a volume of matter that its title-page or its interior arrangement plainly discloses its contents, the table of contents may be omitted.⁴⁹

¶ B. NAMES OF PARTICIPATING CARRIERS.

Names of issuing carriers, including those for which joint agent acts under power of attorney, and names of carriers par-

⁴⁶ See note 6, *supra*.

⁴⁷ See note 35, *supra*.

⁴⁸ *Ibid*.

⁴⁹ Rule 34, Tariff Circular 17-A.

ticipating under concurrences, both alphabetically arranged. If there be not more than ten participating carriers their names may be shown on the title-page of the tariff.

¶ C. SHOW CONCURRENCE FORMS AND NUMBERS.

The form and number of the power of attorney or concurrence by which each carrier is made a party to the tariff must be shown.⁵⁰

¶ D. EXCURSION-FARE TARIFFS MUST SHOW, OR REFER TO, LIST OF PARTICIPATING CARRIERS.

Tariffs containing round-trip excursion fares and instructions as to sale and use of tickets thereunder must show a full list of carriers, parties thereto, or must give reference by I. C. C. numbers to the tariffs on which such excursion fares are based; must bear notation that the same carriers that are parties to the tariffs so referred to are, under the authorities and concurrences there shown, parties to the excursion-fare tariffs, and provision that tickets must not be sold thereunder via the line of any carrier that is not specified as party to the tariff or tariffs so referred to.⁵¹

¶ E. INDEX OF STATIONS.

Alphabetically arranged and complete index of stations from which the tariff applies, and alphabetically arranged and complete index of stations to which the tariff applies, together with the name of State in which located. If there be not more than twelve points of origin and twelve points of destination, they may, if practicable, be shown on title-page of tariff.⁵²

¶ F. GEOGRAPHICAL DESCRIPTION OF APPLICATION OF TARIFF.

Geographical description of tariff may be used only when the tariff applies from or to all stations in one or more States or Territories, or when it applies to all points in a State or Territory except those specified. But such list of exceptions

⁵⁰ Rule 34, Tariff Circular 17-A.

⁵¹ Ibid.

⁵² Ibid.

for a State may not include more than 30 points. For example, a tariff may state that it applies from all points in New York, Pennsylvania, and New Jersey, and from all points in Delaware except (*here give alphabetical list of excepted points*), and from the following points in Ohio (*here give alphabetical list of Ohio points*).⁵³

¶ G. TRAFFIC TERRITORIAL OR GROUP DESCRIPTION OF APPLICATION OF TARIFFS.

Traffic territorial or group descriptions may be used to designate points to or from which fares named in the traffic apply, provided a complete list of such points arranged by traffic territories or groups is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list. In this list the stations on each line of road must be grouped together alphabetically and under the name of the road.⁵⁴

¶ H. IF POINTS OF ORIGIN AND DESTINATION ARE ARRANGED ALPHABETICALLY, INDEX OF STATIONS MAY BE OMITTED.

If in naming fares in the tariff, points of origin and of destination are arranged alphabetically, or alphabetically by States or roads, alphabetical index of stations may be omitted.

¶ I. REFERENCE MARKS AND ABBREVIATIONS

Explanation of reference marks and technical abbreviations used in the tariff.⁵⁵

¶ J. ROUTING UNDER TARIFF.

If the fares apply via more than one route or gateway, the route or gateway shall be shown in connection with the fare, or the different routes shall be specified and each route be given a number, in which event the routing to each point of destination named in the tariff will be shown by placing opposite thereto, in a column headed "Route," the proper route number or numbers.⁵⁶

⁵³ Rule 34, Tariff Circular 17-A.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

¶ K. EXPLANATION OF FARES AND RULES.

Such explanatory statement in clear and explicit terms regarding the fares and rules contained in the tariff as may be necessary to remove all doubt as to their proper application.⁵⁷

¶ L. RULES GOVERNING THE TARIFF.

Rules and regulations which govern the tariff, the title of each rule and regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the fares named in the tariff shall be entered, except that a special rule applying to a particular fare shall be shown in connection with and on the same page with such fare.⁵⁸

¶ M. NO RULE SHALL AUTHORIZE SUBSTITUTING FARE FOUND IN ANY OTHER TARIFF.

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any fare named in the tariff a fare found in any other tariff, or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part.⁵⁹

¶ N. GENERAL RULES REGARDING STOP-OVERS AND BAGGAGE.

These rules shall include the general rules governing stop-over privileges and the general baggage regulations, and also schedule of excess-baggage rates, unless such excess-baggage rates are shown in tariff in connection with the fares.⁶⁰

¶ O. TARIFF RULES AND REGULATIONS FILED AND POSTED MAY BE REFERRED TO IN OTHER SCHEDULES GOVERNED THEREBY.

A carrier or an agent may publish, under I. C. C. number, post and file a tariff publication containing the rules and regulations which are to govern certain fare schedules, and such publication may be made a part of such fare schedules by the

⁵⁷ Rule 34, Tariff Circular 17-A.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

specific reference "Governed by rules and regulations shown in . . . I. C. C. No." ⁶¹

A fare schedule may in like manner refer to another schedule for the governing rules and regulations. ⁶²

A schedule or a publication so referred to must be on file with the Commission and be posted at every place where a schedule that refers to it is posted. ⁶³

¶ P. THE FARES.

The fares, explicitly stated in cents or in dollars and cents, together with the names of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated or ambiguous plans or terms must be avoided. ⁶⁴

¶ Q. FARES IN CONNECTION WITH STAGE ROUTES, ETC.

The Commission has decided that a joint fare may not be made with a carrier that is not amenable to the Act. Therefore tariffs containing fares applying in connection with stage routes or fares which include hotel accommodations or admission to entertainments must separately show the carrier's portion of such fares, and such portions of fares must be alike to all, regardless of whether or not passenger purchases ticket for stage line, or desires the other accommodations mentioned. ⁶⁵

¶ R. FARES FOR EXCURSIONS.

Tariffs naming fares for excursions may state such fares in such terms as "One first-class fare for the round trip," "One first-class fare and a third for the round trip," "One first-class fare plus dollars for the round trip," and must give specific reference by I. C. C. number or numbers to the tariff or tariffs containing such first-class fares. ⁶⁶

¶ S. ARRANGEMENT OF POINTS IN LOCAL TARIFFS.

In naming fares in local passenger tariffs points will be

⁶¹ Rule 34, Tariff Circular 17-A.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

arranged geographically, and the points on main line shall appear first in order, followed by points on branch lines diverging from main line. The points on a branch line will be separated from main line and other branch-line points by a rule. The point of divergence from main line shall be shown at the top of the branch-line points, but fares to and from such point of divergence need not be repeated.

Head-Line Points.

Points shown at the top of column of fares will be known as "head-line points," and each column will be designated by a letter, or, if necessary, by a combination of letters or of letters and numerals.

Side-Line Points.

Points shown at the side of the columns of fares will be known as "side-line points," and will be numbered consecutively. The alphabetical index of points in the tariff will show the location of fares to or from each point by head-line letters and side-line numbers.⁶⁷

¶ T. ARRANGEMENT OF POINTS IN INTERDIVISION TARIFF.

Interdivision tariffs may be arranged geographically or alphabetically, but if arranged geographically the rule in *paragraph F, supra*, will be followed.⁶⁸

§ 639. Amendments and Supplements to Tariffs.

¶ A. AMENDMENTS AND SUPPLEMENTS DEFINED AND FORM THEREOF.

A change in a tariff shall be known as an amendment and, excepting amendments to tariffs issued in loose-leaf form, and changes in tariffs covering round-trip and excursion fares, shall be printed in a supplement to the tariff which it amends, specifying such tariff by its I. C. C. number. The supplement shall be reissued each time an amendment is made and shall always contain all the amendments to that tariff that are in

⁶⁷ Rule 35, Tariff Circular 17-A.

⁶⁸ *Ibid.*

force. Supplements to a tariff shall be numbered consecutively as supplements to that tariff and not be given new or separate I. C. C. numbers. An amended item must always be printed in supplement in its entirety as amended.⁶⁹

¶ B. PARTICIPATING CARRIERS.

A supplement shall contain either a list of carriers participating therein, or shall state that the list of participating carriers is "as shown in tariff," or "as shown in tariff, except [*here show alphabetically all additions to and eliminations from the original list that are affected by the supplement, or that have been affected by previous supplements.*]"⁷⁰

¶ C. SHOW EFFECTIVE DATE OF REISSUED ITEMS AND I. C. C. REFERENCE.

A tariff which contains reissued items brought forward from a previous issue which has not been in effect thirty days, or a supplement which brings forward reissued items without change from a former supplement or tariff, must not bear notation "Effective at once, except as noted," but instead must bear the notation "Effective except as noted in individual items." Example: "Issued, 19.., effective 19.., except as noted in individual items." Reissued items brought forward without change must show in conspicuous form and convenient manner the following: "Reissue [*in black-face type*]; effective [*date upon which item became effective*] in I. C. C. No." or "in Supplement No. to I. C. C. No." When the reissued item became effective in a former supplement to the same tariff the I. C. C. number may be omitted, but the supplement number must be given.⁷¹

Items reissued from publications that were on file prior to June 1, 1907, may show last date and reference prior to June 1, 1907.⁷²

⁶⁹ Rule 38, Tariff Circular 17-A.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

¶ D. NUMBER OF SUPPLEMENTS IN EFFECT AT ONE TIME.

There shall at no time be more than one supplement in effect to any tariff and such effective supplement to a tariff of 20 or more pages, may not contain more than 20 percentum of the number of pages in the tariff. Supplement to a tariff of less than 20 pages may not contain more than two pages.⁷³

¶ E. SUPPLEMENT EXCEEDING LIMIT SUBJECT TO REJECTION.

A supplement to a tariff which has the effect of exceeding the above-indicated number of pages of supplemental matter to that tariff will be subject to rejection when offered for filing. The reissuance of a tariff will cancel supplement to such tariff.⁷⁴

¶ F. NO SUPPLEMENT TO EXCURSION-FARE, COMMUTATION-FARE, OR MILEAGE TARIFFS.

No supplement may be issued to any excursion-fare tariff that is issued on less than statutory notice except for the purpose of canceling the tariff.⁷⁵

¶ G. AMENDMENTS TO LOOSE-LEAF TARIFFS. NO SUPPLEMENT.

All changes in and additions to tariffs issued in loose-leaf form must be made by reprinting both pages of the leaf upon which change is made. Such pages must not be given supplement numbers but must be designated "First revised page . . .," "Second revised page . . ." etc., must show the I. C. C. number of the tariff, the issued and effective dates, and the name, title, and address of officer by whom issued. Changes or additions must be noted by proper reference marks. When no change or addition is made in one of the pages reprinted it must bear notation "No change in this page."⁷⁶

¶ H. SUPPLEMENTS TO PERIODICAL TARIFFS.

If a tariff provides that it will be reissued periodically at specified times, not more than six months apart, and the life

⁷³ Rule 38, Tariff Circular 17-A.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

of the tariff does not exceed six months, and such provision is strictly observed, the supplement to such tariff may contain all amendments thereto between such specified dates for reissue, without limit as to size. Such tariff must bear on upper left-hand corner of title page notation, "This tariff will be reissued effective on or before, 19..."⁷⁷

¶ I. SUPPLEMENT TO TARIFF THAT IS FILED AND NOT YET EFFECTIVE.

If a tariff is filed on statutory notice canceling another tariff, and after such filing and prior to the effective date of such new tariff a supplement to the tariff to be so canceled should be lawfully issued, fares in that supplement could not continue in effect for the thirty days required by law because the cancellation of the tariff also cancels supplements to it. In such a case supplement containing changes not included in the tariff that is to become effective may be issued as supplement both to the tariff in effect and to the tariff on file that will effect such cancellation, and be given both I. C. C. numbers. In other words, such issue must be a supplement to each of the tariffs, and copies must be filed accordingly. A supplement issued under this Rule containing reissued items shall note in connection with each of such items, in addition to the date effective as required by the Rule, that the reissued items expire on the date at which the new tariff becomes effective, and that the new tariff will apply in lieu thereof; and such reissued items must not be brought forward in subsequent supplement to the new tariff. Such supplement may not contain any changes except those lawfully made by supplement to the tariff which is to be canceled by the tariff that has been filed and that is also so supplemented; and no other kind of supplement to a tariff that is on file and not yet effective may be made effective within thirty days from the effective date of the tariff without special permission.⁷⁸

The provisions of *Paragraph D* of this Rule as to the number

⁷⁷ Rule 38, Tariff Circular 17-A.

⁷⁸ Ibid.

of supplements to a tariff that may be in effect at any time, and the volume of supplemental matter they may contain must be observed in connection with supplement issued under this paragraph.⁷⁹

¶ J. WITHDRAWAL AND ADOPTION OF TARIFFS WHEN ONE CARRIER IS ABSORBED BY ANOTHER CARRIER.

In case of change of ownership or control of a carrier the carrier whose line is absorbed, taken over, or purchased by another carrier shall unite with that other carrier in common supplements to the tariffs on file with the Commission, on the one hand withdrawing and on the other hand accepting and establishing such tariffs and all effective supplements thereto. Such common supplements shall be executed jointly by the traffic officers of both the old and new carriers, shall be numbered consecutively as supplements to the tariffs to which they are directed, and may be made effective on five days' notice to the public and the Commission by noting thereon reference to this Rule. Amendments to such tariffs must thereafter be filed in consecutively numbered supplements thereto until the tariffs are reissued. New tariffs reissuing or superseding these shall be numbered in the I. C. C. series of the new carrier.⁸⁰

¶ K. WITHDRAWAL AND ADOPTION OF TARIFFS WHEN A ROAD OR PORTION THEREOF IS TRANSFERRED TO ANOTHER COMPANY, OR ITS NAME IS CHANGED.

When a road or a part of a road is transferred from the operating control of one company to that of another, or when its name is changed, the existing tariffs issued by the company that surrenders control must be withdrawn by it and adopted by the company assuming control, as provided in the preceding paragraphs.⁸¹

⁷⁹ Rule 38, Tariff Circular 17-A.

⁸⁰ Ibid.

⁸¹ Ibid.

¶ L. ADOPTION OF TARIFFS ISSUED BY OTHER CARRIERS OR JOINT AGENTS, AND OF CONCURRENCES, POWERS OF ATTORNEY, ETC., FILED BY OLD CARRIER.

As to tariffs issued by other carriers or joint agents under concurrences or powers of attorney granted by the old carrier or company, the new carrier or company shall, if it intends to use such tariff publications and rates, issue, file, and post, with I. C. C. numbers, an adoption notice, substantially as follows:⁸²

The [*name of carrier*] hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, filed with the Interstate Commerce Commission by the [*name of old carrier*] prior to [*date*] the beginning of its possession. By this tariff it also adopts and ratifies all supplements or amendments to any of the above tariffs, etc., which it has heretofore filed with said Commission.⁸³

This notice may be made effective and be filed on immediate notice.⁸⁴

¶ M. ADOPTION NOTICE FILED BY RECEIVER.

Similar adoption notice must be filed by a receiver when assuming possession and control of a carrier's lines.⁸⁵

¶ N. CONCURRENCES AND POWERS OF ATTORNEY OF OLD CARRIER MUST BE REPLACED BY THOSE OF NEW COMPANY.

Concurrences and powers of attorney so adopted must, as soon as possible, be replaced and superseded by new concurrences and powers of attorney issued by and in the name of the new carrier or company, and in each instance canceling the concurrence or power of attorney superseded.⁸⁶

The carrier surrendering control of the property has no lawful right to abandon its tariffs except on lawful notice, and when it surrenders control of the property it surrenders all right to publish rates or fares applicable thereto except under

⁸² Rule 38, Tariff Circular 17-A.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

proper authority from the carrier or company to whose control the property passes. The public has a right to available and lawfully applicable rates and fares over that property.⁸⁷

§ 640. Cancellation of Tariffs and Parts thereof.

¶ A. TARIFF OR SUPPLEMENTS TO TARIFF SHALL SPECIFY CANCELLATIONS.

If a tariff or supplement to a tariff is issued which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state the portion of such other tariff which is thereby canceled, and such other tariff shall at the same time be correspondingly amended, effective on the same date, in the regular way; and such supplement to such tariff so amended shall be filed at the same time and in connection with the tariff which contains the new fares.⁸⁸

¶ B. CANCELLATION MUST BE BY AUTHORIZED AGENT OR BY CARRIER THAT ISSUED THE TARIFF CANCELED.

An agent who acts under power of attorney is fully authorized to act for the carriers that have named him their agent and attorney, and, therefore, it is permissible for him to cancel by his tariffs issues of such principals. A carrier may not by its individual tariff cancel, amend, or modify a tariff by a duly authorized agent, except when corresponding amendment to such agent's tariff is filed at the same time, and as per *Paragraph A, supra*.⁸⁹

¶ C. CONCURRENCE DOES NOT CONFER AUTHORITY TO CANCEL.

A concurrence does not confer authority upon either carrier or agent to cancel tariffs of concurring carrier, and, therefore, tariffs issued under concurrences may not assume to cancel, or carry notation of cancellation of, tariffs of and issued by concurring carriers. Such cancellations must be made by the carrier that issued the tariff that is to be canceled.⁹⁰

⁸⁷ Rule 38, Tariff Circular 17-A.

⁸⁸ Rule 37, Tariff Circular 17-A.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

¶ D. CANCELLATION NOTICE MUST BE BY SUPPLEMENT.

If a tariff is canceled with the purpose of canceling entirely the fares named therein, or when, through error or omission, a later issue failed to cancel the previous issue and a tariff is canceled for the purpose of perfecting the records, the cancellation notice must not be given a new I. C. C. number, but must be issued as a supplement to the tariff which it cancels, even though such tariff may at the time have a supplement in effect.⁹¹

¶ E. CANCELLATION NOTICE SHALL SPECIFY WHERE FARES WILL THEREAFTER BE FOUND.

If a tariff or part of a tariff is canceled, the cancellation notice shall make specific reference to the I. C. C. number of tariff in which such fares will thereafter be found, or if combination fares are to apply, or if no fares or arrangements in effect, shall so state. Cancellation of a tariff also cancels supplement to such tariff, if any in effect. If a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice printed in new tariff, as provided elsewhere.⁹²

¶ F. CONFLICT IN PASSENGER TARIFFS.

Certain fares of a carrier had been published in a joint agent's tariff and also in its own tariff. The carrier issued a new tariff canceling the fares in its own tariff, but did not secure their cancellation in the joint agent's tariff: *Held*, That the new tariff was unlawful because in conflict with the uncanceled tariff of the joint agent.⁹³

§ 641. Agents authorized to issue and File Tariffs and Supplements thereto.

¶ A. NOTICE OF AUTHORIZATION AND ACCEPTANCE MUST BE FILED.

If a carrier authorizes an agent to file its tariffs and sup-

⁹¹ Rule 37, Tariff Circular 17-A.

⁹² *Ibid*.

⁹³ Rule 104, Con. Rul. Bul. No. 4 (Oct. 16, 1908).

plements thereto or certain of them, official notice of such authorization and of acceptance of responsibility by the carrier for his acts, in form as hereinafter specified, must be filed with the Commission.⁹⁴

¶ B. FORM OF APPOINTMENT OF AGENT TO FILE TARIFFS AND SUPPLEMENTS THERETO.

The following form, on paper 8 by 10½ inches in size, will be used in giving authority to an agent to file for the carrier giving the authority, tariffs and supplements thereto. Such authority must not be given to an association or bureau, and it may not contain authority to delegate to another power thereby conferred.⁹⁵

This form may be modified so as to confer the authority desired by omitting the words “(1) for it alone, and (2),” or by omitting the words “and (2) for it jointly with other carriers.”⁹⁶

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

[*Date*], ...

Form PX1—No. ...

Know all men by these presents:

That the [*name of carrier*] has made, constituted and appointed, and by these presents does make, constitute, and appoint [*name of person appointed*] its true and lawful attorney and agent for the said company, and in its name, place, and stead, (1) for it alone, and (2) for it jointly with other carriers, to file passenger fare schedules and supplements thereto, as required of common carriers by the Act to Regulate Commerce and by regulations established by the Interstate Commerce Commission thereunder, for the period of time, the traffic, and the territory now herein named:

.....

And the said [*name of carrier*] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully, to all intents and purposes, as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its president and to be duly attested

⁹⁴ See note 6, supra.

⁹⁵ Rule 42, Tariff Circular 17-A.

⁹⁶ Ibid.

under its corporate seal by its secretary, at, in the State of, on this day of, in the year of our Lord nineteen hundred and

The [name of carrier.]

By,

Its President.

Attest:

. . . ., Secretary.

[Corporate Seal.]

Original Form to be filed with Commission and Duplicate furnished Agent.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the agent to whom power of attorney is given. Separate authorizations will be given for freight and passenger tariffs.

¶ C. CROSS EXCHANGE OF CONCURRENCE AVOIDED.

If two or more carriers execute the above form containing the words "for it jointly with other carriers" in favor of a joint agent it will not be necessary for the carriers to exchange concurrences with *each other* as to the joint tariffs issued by that joint agent under that authority.⁹⁷

¶ D. AUTHORITY TO AGENT MAY BE REVOKED OR TRANSFERRED.

Authority given as in *Paragraph A, supra*, may be revoked by a carrier upon thirty days' official notice to the Commission, or at any time be transferred to another agent by filing with the Commission notice of such transfer, accompanied by full-form authorization for the newly named agent.⁹⁸

¶ E. AUTHORIZATIONS FOR AGENT AND CONCURRENCES IN HIS
TARIFFS MUST BE FILED.

If two or more carriers appoint the same person as agent for the filing of tariffs and supplements thereto, each of them will be required to file with the Commission power of attorney, in form prescribed, appointing him their agent; and the concurrence of every other carrier participating in any tariff or supplement thereto which is filed by him must be on file with the Commission or accompany the tariff.⁹⁹

⁹⁷ Rule 42, Tariff Circular 17-A.

⁹⁸ See note 6, *supra*.

⁹⁹ *Ibid*.

¶ F. JOINT AGENT WILL USE HIS OWN I. C. C. SERIAL NUMBER.

Such joint agent duly authorized to act for several carriers must file joint tariffs under I. C. C. serial numbers of his own.¹⁰⁰

¶ G. TARIFFS ISSUED BY A CARRIER UNDER CONCURRENCES WILL BE FILED BY IT FOR ALL CONCURRING.

Tariff issued by a carrier under its I. C. C. numbers may include under proper concurrence shown therein, fares via, and to and from points on other carriers' lines, and concurring carriers may use such tariffs for posting at their stations. Such tariffs must be filed by the issuing carrier and such filing will constitute filing for all lawfully concurring carriers.¹⁰¹

¶ H. SEND COPIES OF JOINT PUBLICATION TO EVERY CARRIER PARTICIPANT THEREIN.

The agent of the carrier that issues a joint tariff publication shall at once send copies thereof to each and every carrier that is named as party thereto.¹⁰²

¶ I. CARRIER MUST NOT PUBLISH FARES CONFLICTING WITH OR DUPLICATING FARES PUBLISHED BY ITS AGENT.

A carrier that grants authority to an agent or to another carrier to publish and file certain of its fares must not in its own publications publish fares in conflict with those which are published by such authorized agent or other carrier, or which duplicate such fares.¹⁰³

§ 642. Limiting Use of Terms "Common Points," "Southeastern Territory," and similar Terms.

The terms "common points," "Southeastern Territory," or similar terms shall not be used in any tariff for the purpose of indicating the points from or to which fares named therein apply unless a full list of such points is printed in

¹⁰⁰ See note 6, supra.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

the tariff or specific reference is given to the I. C. C. number of the issue that contains such list.¹⁰⁴

§ 643. Basing or Proportional Tariffs must be Specific.

Tariffs containing basing fares must specify clearly the extent and manner of their use, and tariffs that are especially intended for use in connection with published basing fares must show the I. C. C. numbers of tariffs in which the bases may be found.¹⁰⁵

§ 644. Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required.

Each carrier files tariffs under I. C. C. numbers, which are presumed to be used consecutively. Occasionally a tariff or supplement is received by the Commission which does not bear I. C. C. number next in numerical order to that borne by the last one filed. This is sometimes occasioned by the missing number having been assigned to a tariff that is in course of preparation. Request is made that in so far as is possible, carriers will file tariffs and supplements in consecutive numerical order of I. C. C. numbers. If from any cause this is not done in any instance, the tariff or supplement that is filed with an I. C. C. number that is not consecutive with the last number filed must be accompanied by a memorandum explaining as to the missing number or numbers.¹⁰⁶

§ 645. Index of Passenger Tariffs.

**¶ A. CARRIERS MUST PUBLISH COMPLETE INDEX OF THEIR
TARIFFS.**

Each carrier shall publish, with proper I. C. C. number, post, and file a complete index of the tariffs which are in effect and to which it is a party as an initial line. Such index shall show: (a) I. C. C. number of each tariff; (b) name or initials of issuing road or agent; (c) brief description of character of tariff; (d) concise statement of points between which

¹⁰⁴ See note 49, *supra*.

¹⁰⁵ Rule 36, Tariff Circular 17-A.

¹⁰⁶ See note 6, *supra*.

tariff applies. Tariffs covering short-time excursion rates and supplements to tariffs need not be included in this index.¹⁰⁷

¶ B. REISSUE AND SUPPLEMENTS.

If any changes are made, this index shall be revised to date and be reissued each month, or, supplement may be issued each month showing all changes and also what tariff, if any, shown in index is canceled or superseded by one shown in supplement, and index be reissued every six months. If supplements are used, they must be constructed in accord with specifications as to construction of index and each supplement must cancel preceding supplement and bring forward all corrections. If carrier so desires, lists of its division sheets, official circulars, and of its own numbers of its tariffs or division sheets may appear in this publication.¹⁰⁸

¶ C. NOTATION ON TITLE-PAGE.

Each index must bear on its title-page notations as follows: "This index contains lists of tariff publications in effect on [*date of issue of the index*]," to which may be added: "Or which have been filed to become effective at a later date, as shown within." If supplement to index will not be used, "No supplement to this index will be issued;" if supplements will be used, "Only one supplement to this index will be in effect at any time."

Each supplement to index must bear on title-page the notation: "This supplement contains corrections to and as in effect on [*date of issue of the supplement*]," to which may be added: "or which have been filed to become effective at a later date, as shown within."¹⁰⁹

¶ D. DATE OF ISSUE, BUT NOT EFFECTIVE DATE.

The title-page of index or of supplement must show the date of issue thereof, which must correspond to date shown in notation above, and must not bear an effective date. The

¹⁰⁷ Rule 39, Tariff Circular 17-A.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

rule requiring thirty days' notice does not apply to these indexes and their supplements.¹¹⁰

NOTE.—This rule is also in rules governing freight tariffs. One index containing both passenger and freight tariffs will be deemed sufficient, but if both are included in one index it must be given an I. C. C. number in both freight and passenger series and four copies must be sent to the Commission.¹¹¹

§ 646. Tariffs containing Rail-and-Water or All-Water Rates.

Tariffs containing rail-and-water fares or all-water fares applicable via routes upon which it is necessary to close navigation during a portion of the year, and which do not become effective and expire by specified expiration within the same season of navigation, may provide for suspension and restoration of the rail-and-water fares and the all-water fares named therein under the following regulations:¹¹²

¶ A. NOTATION ON TITLE-PAGE OF TARIFF.

The following notation shall appear on the title-page of the tariff.¹¹³

The fares named herein for rail-and-water or all-water transportation are subject to suspension at the close of navigation and restoration on the opening of navigation of [*here insert the name of the water carrier or carriers specified in the tariff*] on notice as provided on page of this tariff.¹¹⁴

¶ B. RULE IN TARIFF PROVIDING FOR RESTORATION AND SUSPENSION OF FARES.

In the rules governing the tariff shall appear the following:

In anticipation of the opening of navigation of [*here insert name of water carrier or carriers named in the tariff*] restoration of the rail-and-water and all-water fares contained in this tariff and in effective supplement thereto which was in force on the date the fares were last suspended or which has subsequently been made effective, will be announced by supplement to this tariff which will be filed with the Interstate Commerce Commission, be posted at points from which the fares apply, and become effective not less than three days thereafter.

The fares in this tariff and in supplement thereto for rail-and-

¹¹⁰ Rule 39, Tariff Circular 17-A.

¹¹¹ Ibid.

¹¹² Rule 40, Tariff Circular 17-A.

¹¹³ Ibid.

¹¹⁴ Ibid.

water and all-water transportation are effective only during the season of navigation of [*here insert the name of water carrier or carriers named in the tariff*]. The supplement announcing the close of navigation and the suspension of rail-and-water and all-water fares named in this tariff and its effective supplement will be filed with the Interstate Commerce Commission and will be posted at points from which the fares apply not less than three days in advance of the date upon which the fares will be suspended.¹¹⁵

¶ C. ROUTES OTHER THAN GREAT LAKES MAY SUSPEND OR
RESTORE ON ONE DAY'S NOTICE.

Where the tariff suspended or restored under this rule applies to joint transportation by rail and river, or canal, or inland lakes other than the Great Lakes, such tariff may be suspended or restored on a like notice of one day instead of three days.¹¹⁶

¶ D. SUPPLEMENT MAY CONTAIN.

Supplement issued under this rule announcing suspension and restoration of rail-and-water and all-water fares in tariffs must not contain anything except such suspension or restoration notice, and such supplement will not be counted against the number of supplements that is permitted as to such tariff under rule relating to Amendments and Supplements.

¶ E. SUSPENDED TARIFFS MAY BE REISSUED OR AMENDED.

Rail-and-water and all-water fares suspended under this rule may be reissued or amended during such period of suspension upon statutory notice, the same as though the fares were in effect and active use, but the restoration of the fares by supplement notice will not advance the effective date of any supplement to the tariff which has not on the date of restoration become effective.

Supplements made effective prior to the date of restoration will be made effective on a given date, or may be stated to be "Effective with restoration of tariff and supplement for season of 19.. [*to be announced by subsequent supplement*] but not earlier than [*statutory notice*] 19—, nor earlier than noted in individual items."¹¹⁷

¹¹⁵ Rule 40, Tariff Circular 17-A.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

Statutory notice of suspension, withdrawal, or restoration of fares or regulations must be given as to all tariffs that do not contain the provisions of paragraphs 1 and 2 of this Rule.¹¹⁸

§ 647. Fare Schedules rejected by the Commission.

When a schedule is rejected by the Commission as unlawful, the records so show and, therefore, such schedule should not thereafter be referred to as canceled, amended, or otherwise except to note on publication issued in lieu of such rejected schedule "In lieu of rejected by Commission;" nor shall the number which it bears be again used.¹¹⁹

§ 648. Receipt by and Filing of Tariffs with the Commission does not relieve Carriers from Liability for Violation of the Act or Regulations thereunder.

The law affirmatively imposes upon each carrier the duty of filing with the Commission all of its tariffs, and supplements thereto, as prescribed in the law or in any rule relative thereto which may be announced by the Commission, under penalty for failure so to do or for using any fare which is not contained in its lawfully published and filed tariffs. The Commission will give such consistent assistance as it can in this respect, but the fact that receipt of a tariff, or supplement to a tariff, is acknowledged by the Commission, or the fact that a tariff, or supplement to a tariff, is in the files of the Commission, will not serve or operate to excuse the carrier from responsibility or liability for any violation of the law, or of any ruling lawfully made thereunder, which may have occurred in connection with the construction or filing of such tariff or supplement.¹²⁰

§ 649. Fares prescribed in Commission's Decisions must be Promulgated in Tariffs and Commission Notified.

Fares prescribed by the Commission in its decisions and orders after hearings upon formal complaints shall, in every

¹¹⁸ Rule 40, Tariff Circular 17-A.

¹¹⁹ See note 6, *supra*.

¹²⁰ *Ibid*.

instance, be promulgated by the carrier against which such orders are entered in duly published, filed, and posted tariffs or supplements to tariffs and notice shall be sent to the Commission that its order in Case No. has been complied with in "item, page, of tariff, I. C. C. No. or supplement to tariff, I. C. C. No." ¹²¹

§ 650. Circulars announcing Compliance with Orders of Court.

Circulars announcing or explaining the attitude of carriers under injunction of a Court, relating to tariff fares or regulations, must not be issued as supplements to tariffs nor given I. C. C. numbers unless they are issued on statutory notice or under special permission from the Commission for shorter time. The Commission has stated, that it will however, be pleased to have copies of such circulars and the information therein contained. ¹²²

§ 651. Maintenance of Relative Adjustment in issuing Tariffs to conform with Formal Orders of the Commission.

¶ A. RIGHT OF CARRIER PARTY TO A CASE OR PARTICIPANT IN JOINT TARIFF INVOLVED IN SUCH CASE TO ADJUST ITS RATES TO CONFORM TO ORDER OF COMMISSION.

In establishing fares or regulations under an order of the Commission in a formal case, carrier or carriers that are actually and on the record parties to the case, or that are lawful parties to a joint tariff in which the fare or regulation that is prescribed is published by some carrier that is party to the case, may include in the change or changes made in compliance with the Commission's order adjustment at other points in order to preserve established grouping or relation of points: *Provided*, all such changes made by authority of this rule shall be effected by *reductions* in fares or charges. ¹²³

¹²¹ See note 6, *supra*.

¹²² *Ibid*.

¹²³ *Ibid*.

¶ B. CARRIER NOT PARTY TO A CASE NOR PARTICIPANT IN JOINT
TARIFF AS ABOVE MUST SECURE SPECIAL PERMISSION OF
COMMISSION.

If carrier that is not a party to the case or to the joint tariff desires to make, on less than statutory notice, the same changes that are made under the order by carrier that is party to the same, it must secure special permission to do so.¹²⁴

¶ C. PERMISSION FOR LESS THAN STATUTORY NOTICE AND
NOTATION ON TARIFF.

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon five days' notice to the Commission and to the public, and if made effective on less than statutory notice, either under this Rule or under special authority granted in the order in the case, shall bear on its title-page notation "In compliance with order of Interstate Commerce Commission in case No."¹²⁵

**§ 652. All State or other Fares used for Interstate Movements
must be Posted and Filed.**

Fares for through tickets are often made by adding together two or more fares. All State or other fares used in combination for interstate movements must be posted at points from which they apply and filed with the Commission, and can only be charged as to such traffic in accordance with the terms of the Act.¹²⁶

**§ 653. All Local Tariffs should have I. C. C. Numbers and be
Posted and Filed.**

The Commission believes it proper that all local tariffs be given I. C. C. numbers and be posted and filed with the Commission in manner prescribed in the Act.¹²⁷

¹²⁴ See note 6, *supra*.

¹²⁵ *Ibid*.

¹²⁶ *Ibid*.

¹²⁷ *Ibid*.

§ 654. Fares governing Transportation for the United States Government need not be Published.

Provisions for the subsistence and care in transit of Chinese being deported are matters of contract between the carrier and the Government, and need not be published in the tariffs.¹²⁸

§ 655. Rates of the Pullman Company.

The Pullman Company is a common carrier, subject to the jurisdiction of the Interstate Commerce Commission. It is required to publish its rates and its regulations governing the application of those rates, and these when published are for the consideration and correction of the Commission.¹²⁹

§ 656. Tariffs covering Mileage, Commutation, Excursion and Round-Trip Fares and Tickets.

¶ A. IN GENERAL.

The Commission has held that it is of the opinion that the provisions of the sixth section of the Act as amended in respect of the publishing, filing, and posting of tariffs apply to the mileage, commutation and excursion fares authorized by the twenty-second section of the Act. Such a fare when first established or offered is held to be a change of fare which requires a notice of thirty days. No reason appears why this notice should not be given in the case of mileage fares, commutation fares, round-trip fares or other reduced fares which, like ordinary passenger fares, are established for an indefinite period and appear to be a matter of permanent policy.¹³⁰

¶ B. ROUND-TRIP EXCURSION FARES.

The Commission has held that strictly excursion fares, covering a named and limited period, are of a different character than those designated in the preceding paragraph and may properly be established on much shorter notice.¹³¹

¹²⁸ Rule 107, Con. Rul. Bul. No. 4.

¹²⁹ Kurtz v. Pa. Co. et al. (1909), 16 I. C. C. R. 410.

¹³⁰ Rule 52, Tariff Circular 17-A.

¹³¹ Ibid.

To avoid the necessity for special application in cases of this kind the Commission has made a general order fixing the following-named time of notice of round-trip excursion fares, and carriers may govern themselves accordingly:

Fares for an excursion limited to a designated period of not more than three days may be established, without further notice, upon posting a tariff one day in advance in two public and conspicuous places in the waiting room of each station where tickets for such excursion are sold and mailing a copy thereof to the Commission.¹³²

Fares for an excursion limited to a designated period of more than three days and not more than thirty days may be established upon a like notice of three days.¹³³

Fares for a series of daily excursions, such series covering a period not exceeding thirty days, may be established upon like notice of three days as to the entire series, and separate notice of the excursion on each day covered by the series need not be given.¹³⁴

Fares for an excursion limited to a designated period exceeding thirty days will require the statutory notice unless shorter time is allowed in special cases by the Commission.¹³⁵

Definition of Term "Limited to a Designated Period."

The term "limited to a designated period" used above is construed to cover the period between the time at which the transportation can first be used and the time at which it expires. If tariff names different selling dates for excursions which form a series, and the period of time between the first selling date and the last date upon which any tickets sold under the tariff may be used exceeds thirty days, the series of excursions so provided for do not come within the period of "not exceeding thirty days," and such tariff may not be issued by authority of this Rule. But it is permissible to establish fares for two or more distinct and separate excur-

¹³² Rule 52, Tariff Circular 17-A.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

sions to various points and for various occasions, each such excursion limited to a designated period of not more than thirty days, and for convenience of public and agents to announce them in a bulletin tariff under this Rule. It is also permissible to show in such bulletin, fares for a series of excursions between the same points, such series covering a period of more than thirty days, provided full statutory notice of such series is thereby given, and provided title-page of publication bears notation "Effective except as noted in individual items as to which full statutory notice is given." When such items are brought forward to another issue of bulletin they must bear notation "First announced in Bulletin No., I. C. C. No., of, 19..."¹³⁶

No Supplement to Tariff under this Rule.

No supplement may be issued to any tariff that is issued under this Rule except for the purpose of canceling the tariff, and title-page of tariff must so state. Every such tariff must bear notation on title-page "Issued by authority of Rule 52, Tariff Circular, 17-A."

Changes in Excursion Tariffs.

When it becomes necessary to change the terms of a short-time excursion fare tariff issued under this Rule and covering a period not exceeding thirty days, for any of the following reasons: Changes in dates of meeting, involving changes in dates of sale and in return limit, not exceeding thirty days; extension of the return limit, not exceeding thirty days; additional selling dates; additional selling points; additional stop-over privileges; reduction in fares; or to cancel such tariff before date of its expiration when the occasion for the excursion has been declared off, such change or cancellation may, when the excursion is limited to designated period of not more than three days, be made by posting tariff containing the change or supplement containing the cancellation, one day in advance in two public places in the waiting room of each station where tickets for such excursion are sold, and

¹³⁶ Rule 52, Tariff Circular 17-A.

mailing copy thereof to the Commission. If the excursion is limited to a designated period of more than three days and not more than thirty days, cancellation or change may be made on like notice of three days. If the excursion is limited to a designated period exceeding thirty days, statutory notice must be given of change or cancellation, or special permission for shorter time must be secured.¹³⁷

No Index or Routing Required.

Short-time excursion fare tariffs issued under authority of this Rule need not contain alphabetically arranged indexes of stations from and to which the fares apply, nor show specific routing *when* the fares are stated in such terms as "One first-class fare for the round trip," etc.¹³⁸

When the fares are stated in specific sums the routing may be shown by reference to other tariffs which contain the desired routing, and in the following manner: Show in the tariff by proper initials and I. C. C. numbers the tariffs that are thus referred to, designating each of them by a letter, and place opposite the name of each point of origin, in a column marked "Route," the proper reference letter. For example: "Route A. Routing as per I. C. C. No." "From Smithville, Nebr., to Jonesboro, Kans., Route A, \$17.20."¹³⁹

§ 657. Maxima Fares not Specific Fares.

¶ A. FARES AND THEIR APPLICATION MUST BE SPECIFICALLY STATED.

The rulings of the Commission prohibit including in a tariff any rule or regulation which in any way or in any terms authorizes substituting for any fare named in the tariff a fare found in any other tariff or made upon any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part. These rules

¹³⁷ Rule 52, Tariff Circular 17-A.

¹³⁸ Ibid.

¹³⁹ Ibid.

are intended to bring about entire discontinuance of tariff rules which provide that fares named in the tariff will apply to certain points "as maxima," or that if a combination on some gateway or basing point makes less than the fares named in the tariff such combination will apply, or for equalizing or protecting any fare via another line or route or gateway, etc. The intent is that tariffs shall state in specific, clear, and unambiguous terms the fares and their application.¹⁴⁰

¶ B. FARES TO OR FROM INTERMEDIATE POINTS.

The rulings of the Commission provide that a tariff shall contain complete alphabetical indices of the points from and to which it applies. The Commission has held that this is not to be understood as prohibiting the incorporation in a tariff of a rule providing for the affirmative and definite application of the fares named in that tariff to or from points not indexed and which are directly intermediate on the same line with the points that are indexed.¹⁴¹

¶ C. SPECIFIC JOINT THROUGH FARE MUST BE INVARIABLY APPLIED.

In every instance where there is a *specific* fare from point of origin to point of destination it must be applied to through passengers regardless of possible lower combinations.¹⁴²

§ 658. Tariffs governing Use of Party-Fare Tickets.

The tariffs and regulations governing the issuance and use of party fare tickets, together with the rules relating to the allowance of free baggage to persons using such tickets, must be regularly filed and published. The privileges so extended must not be limited to any particular class or classes of persons, but must be open to all. Regulations governing issuance and use of party fare tickets must not be such as will operate to evade or nullify any provision of the law. The Commission suggests that the rules should provide that the party

¹⁴⁰ Rule 64, Tariff Circular 17-A.

¹⁴¹ Ibid.

¹⁴² Ibid.

shall travel on one ticket and consist of not less than ten persons.¹⁴³

Members of Party traveling on Party-Fare Ticket may accompany Exclusive Baggage Car on another Train.

When a party of ten (10) or more persons are traveling on a party-fare ticket and require the exclusive use of a baggage car, and such baggage car is not forwarded upon the same train which bears the passengers, and where it is necessary that one or more men of the party shall accompany the baggage car, a separate ticket may be issued for the use of such men as members of the party, provided such ticket is indorsed as a part of such party fare ticket and for, and limited to, the train upon which the baggage car is hauled.

It is not, however, lawful or permissible to permit person or persons to go in advance of or to follow the party as passengers and be computed as a part of the party or as entitled to the party fare. All tariff provisions to such effect are unlawful and must be withdrawn at once.¹⁴⁴

§ 659. Side Trips not specifically shown in a Through Tariff.

The Commission has held that a note in a through tariff providing that passengers purchasing through tickets thereunder shall be entitled to such side-trip privileges as are stated in the individual tariffs on file with the Commission of the carriers that are parties to the through fares, is a sufficient compliance with the requirements of law and with the rules of the Commission.¹⁴⁵

§ 660. Concurrence by Carriers in Tariffs issued and filed by another Carrier or its Agent.

¶ A. MANDATE OF THE STATUTE REGARDING CONCURRENCE IN JOINT TARIFFS.

The Act provides that each of the parties to a joint tariff, other than the one filing the same, shall file with the Com-

¹⁴³ Rule 62, Tariff Circular 17-A.

¹⁴⁴ Ibid.

¹⁴⁵ Rule 177, Con. Rul. Bul. No. 4 (May 10, 1909).

mission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.¹⁴⁶

¶ B. CONCURRENCE BETTER THAN POWER OF ATTORNEY.

The Commission has ruled that experience has demonstrated that it is simpler and better to use concurrence than power of attorney in giving authority to a carrier to publish and file another carrier's fares. Provision for giving power of attorney to another carrier has therefore been eliminated except for the purpose of granting authority to give and receive concurrences as provided elsewhere.¹⁴⁷

This does not invalidate or change the terms or effect of any power of attorney now on file with the Commission.¹⁴⁸

¶ C. CONCURRENCE MUST BE GIVEN TO CARRIERS NAMED THEREIN.

Concurrences must be given to carriers named therein and authority so granted to a carrier may be by it delegated to its lawfully appointed agent.¹⁴⁹

¶ D. SIZE OF PAPER.

All concurrences must be on paper 8 by 10½ inches in size.¹⁵⁰

¶ E. SEPARATE CONCURRENCES FOR PASSENGER AND FREIGHT TARIFFS.

Separate concurrences will be given by carriers for passenger and freight tariffs.¹⁵¹

¹⁴⁶ See note 1, *supra*.

¹⁴⁷ See note 95, *supra*.

¹⁴⁸ *Ibid*.

¹⁴⁹ *Ibid*.

¹⁵⁰ *Ibid*.

¹⁵¹ *Ibid*.

¶ F. FORM OF CONCURRENCE IN A TARIFF THAT IS ISSUED AND FILED BY ANOTHER CARRIER OR ITS AGENT AND TO WHICH THE CARRIER GIVING CONCURRENCE IS A PARTY.

The following form will be used in giving concurrence in a tariff that is issued and filed by another carrier or its agent and to which the carrier giving concurrence is a party. If given to continue until revoked, it will serve as continuing concurrence in the tariff described in the concurrence and all supplements to and reissues thereof. If provision for concurrence to continue until revoked is stricken out, a new concurrence will be required with each supplement or reissue.¹⁵²

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date] . . . , . . .

Form PX2—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of the fare schedule described below, together with supplements thereto and reissues thereof which the named issuing carrier or its agent may make and file, and hereby makes itself a party thereto and bound thereby, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

Title and number: [Here give exact description of title of schedule, including number and name of series.]

Date of issue: . . . , . . .

Date effective: . . . , . . .

Issued by { [Official.]
 [Company.]

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Concurrence accompanying Tariff.

The original of this form will be filed with the Commission by the carrier or agent who files the tariff and will accompany the tariff.¹⁵³

¹⁵² Rule 43, Tariff Circular 17-A.

¹⁵³ Ibid.

¶ G. FORM OF CONCURRENCE GIVEN BY CARRIER TO EMBRACE ALL TARIFFS ISSUED BY ANOTHER CARRIER OR ITS AGENT IN WHICH CONCURRING CARRIER IS SHOWN AS A PARTICIPATING INTERMEDIATE OR TERMINAL LINE.

Concurrence may be given by a carrier to embrace all tariffs issued by another carrier or its agent in which the concurring carrier is shown as a participating intermediate or terminal line, and after the following form:¹⁵⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Passenger Department,

[*Date*] , ...

Form PX3—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto, which the [*name of carrier*] or its agent may make and file, in which it is shown as a participating carrier, and hereby makes itself a party thereto and bound thereby in so far as such schedule contains fares applying via its line and to, but not from, points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

Original Form to be filed with Commission and Duplicate furnished Carrier.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way, except to show what agents have been given power of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.¹⁵⁵

Concurrences PX3 cover all fares issued by carrier to which given and which apply via the line of, and to but not from points located upon the line of the carrier giving the concur-

¹⁵⁴ Rule 44, Tariff Circular 17-A.

¹⁵⁵ *Ibid.*

rence. This is intended to reserve to the initial carrier the quotation of fares upon traffic originating on its line, except when by use of another form of concurrence or power of attorney it grants authority to some other to quote such fares.¹⁵⁶

Round-Trip Excursion Fares included in Concurrence.

Round-trip excursion fares are not, however, considered as applying to traffic originating at the points where the return journey begins. Concurrences PX3 are, therefore, considered and held to include concurrence in round-trip excursion fares, stated in specific figures or in some such term as "one fare for the round-trip."¹⁵⁷

¶ H. FORM OF CONCURRENCE GIVEN BY A CARRIER IN TARIFFS ISSUED BY ANOTHER CARRIER OR ITS AGENT APPLYING FARES TO OR FROM ITS POINTS OR VIA ITS LINES, TO CERTAIN DESCRIBED POINTS OR TERRITORIES.

Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying fares to or from its points or via its lines, to certain described points or territories, and after the following form, modified as may be necessary to confer exactly the authority intended to be granted. For granting authority to publish and file fares to and from and via its lines, and not otherwise qualified, carriers will use concurrence form PX5 or PX7.¹⁵⁸

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date] . . . , ...

Form PX4—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto, which the [name of carrier] or its agent may make and file, and in which this company is shown as a participating carrier,

¹⁵⁶ Rule 44, Tariff Circular 17-A.

¹⁵⁷ Ibid.

¹⁵⁸ Rule 45, Tariff Circular 17-A.

and hereby makes itself a party to and bound in so far as such schedule contains fares applying upon; or between and; or from to; or via; until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Original Form to be filed with Commission and Duplicate furnished Carrier.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given.¹⁵⁹

¶ I. FORM OF CONCURRENCE BY A CARRIER IN TARIFFS ISSUED BY ANOTHER CARRIER OR ITS AGENT APPLYING FARES TO AND FROM ITS POINTS AND VIA ITS LINES.

Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying fares to and from its points, and via its lines, and after the following form:¹⁶⁰

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date], ...

Form PX5—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto, which the [name of carrier] or its agent may make and file, and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying to and from stations on its lines, and via its lines, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

¹⁵⁹ Rule 45, Tariff Circular 17-A.

¹⁶⁰ Rule 46, Tariff Circular 17-A.

Original Form to be filed with Commission and Duplicate furnished Carrier.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way, unless to show what agents have been given powers of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.¹⁶¹

¶ J. FORM OF CONCURRENCE GIVEN BY TWO OR MORE CARRIERS
IN TARIFFS ISSUED BY THEIR JOINT AGENT.

If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under power of attorney form PX1, concurrence in tariffs issued by him under such authority may be in either of the following forms:¹⁶²

(A)

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date], ...

Form PX6—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger fare schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such tariff contains fares applying via its line, and to but not from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

¹⁶¹ Rule 46, Tariff Circular 17-A.

¹⁶² Rule 47, Tariff Circular 17-A.

(B)

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date], ...

Form PX7—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger fare schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying via its line, and to and from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Filing.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.¹⁶³

¶ K. FORM OF CONCURRENCE GIVEN BY TWO OR MORE CARRIERS
IN TARIFFS ISSUED BY THEIR JOINT AGENT, APPLYING TO
OR FROM CERTAIN POINTS OR TERRITORY.

If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under power of attorney form PX1, concurrence in tariffs issued by him under such authority applying to or from certain points or territory may be issued in the following form, modified so as to confer exactly the authority desired.¹⁶⁴

¹⁶³ Rules 47 and 48, Tariff Circular 17-A.

¹⁶⁴ Rule 49, Tariff Circular 17-A.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Passenger Department,

[*Date*] . . . , . . .

Form PX8—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto which the [*here give list of all roads for which the agent has powers of attorney*], or either or any of them, may make and file through their agent and attorney [*name of agent*], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying from . . . to points on or reached via its line; or from points on or via its line to . . . until this authority is revoked by formal and official notice of revocation placed in the hands of the Interstate Commerce Commission and of the carriers to which this concurrence is given, or of their agent and attorney herein named.

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

Filing.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicate to each and every carrier represented by him.¹⁶⁵

NOTE.—Concurrence, form PX2, applies to individual publication named therein. Concurrence, form PX3 or PX6, confers authority to publish and file fares to, but not from, points on line of concurring carrier and via its lines. Concurrence, form PX5 or PX7, confers authority to publish and file fares to and from points on line of concurring carrier and via its lines. Forms PX3, PX5, PX6, and PX7 are not to be modified except as specified in the Rules. The use of these several forms as provided will, therefore, show by the form number just what authority has been given except when form PX4 or PX8 is used, these forms being provided for instances which the other forms do not exactly fit. The Commission does not require the substitution of concurrence form PX5 for form PX4, now on file, which covers only the authority provided for in the new form PX5, but will welcome such substitution. For all new concurrences forms will be used as specified in the several Rules, and PX4 or PX8 only when neither of the other forms provides for the authority it is desired to confer.

¹⁶⁵ Rule 49, Tariff Circular 17-A.

¶ L. NUMBERS OF CONCURRENCES AND AUTHORIZATIONS.

Each carrier will give authorizations and concurrences serial numbers, beginning with No. 1 in each series, as indicated by forms, and continuing in consecutive numbers as to each series, and keeping these numbers separate and apart from I. C. C. numbers of tariffs.

¶ M. REVOCATION EFFECTIVE.

A concurrence may be revoked by filing notice of such revocation with the Commission and serving same upon the carrier to which such concurrence was given. Such notice must specify the date upon which revocation is to be made effective, and must give at least sixty days' notice to the Commission and to the carrier to which concurrence was given. Corresponding correction of tariff or tariffs shall be made in the next supplement to or reissue thereof, and if necessary, supplement or reissue shall be issued for the sole purpose of making such correction lawfully effective on statutory notice upon the effective date stated in the notice of revocation.¹⁶⁶

¶ N. SUBSIDIARY OR SMALL-LINE TARIFFS.

Subsidiary or small lines which do not wish to issue concurrences or tariffs may give to the parent or other line power of attorney to concur in tariffs, and also general concurrence PX4 or PX5, to file tariffs, and the carrier holding such authority and concurrence may give and also receive concurrence for itself and the lines for which it acts in one instrument. Such subsidiary or small lines must, however, be named in concurrences so given. In giving power of attorney to concur in tariffs, form PX1 will be modified by striking out from line six the word "file" and substituting therefore: "to give and receive concurrences in."¹⁶⁷

¶ O. CONFLICTING AUTHORITY TO BE AVOIDED.

In giving concurrences care must be taken to avoid proba-

¹⁶⁶ Rule 50, Tariff Circular 17-A.

¹⁶⁷ Ibid.

bility of two or more agents or carriers naming conflicting fares or rules.¹⁶⁸

¶ P. CARRIER ISSUING AUTHORITY OR CONCURRENCE IS NOT RELIEVED FROM DUTY OF POSTING TARIFFS.

The granting of authority to issue tariffs under power of attorney, or general concurrence, does not relieve the carrier conferring the authority from the necessity of complying with the law with regard to posting tariffs. It is proper to use tariffs issued under its authority for that purpose.¹⁶⁹

¶ Q. USE OF CONSOLIDATED CONCURRENCES.

When consolidated form of concurrence PX6, PX7, or PX8 has been used and additions are to be made to the list of roads for which such agent acts under powers of attorney the necessity for a new set of consolidated concurrences presents itself. Trouble and inconvenience can be avoided by the issuance of powers of attorney authorizing such agent to receive concurrence provided in *paragraphs J and K, supra*, this section, and the securing of new concurrences will be comparatively simple.¹⁷⁰

¶ R. CONCURRENCE IN TARIFFS OF CARRIERS IN ADJACENT FOREIGN COUNTRIES.

The Commission has stated that through fares from points in the United States to points in foreign countries adjacent thereto and through rates from points in adjacent foreign countries to points in the United States are a great convenience, and that it desires to permit and encourage the publication and filing of such through fares under lawful and proper conditions.¹⁷¹

Concurrences required in Tariffs to or from Mexico.

A joint tariff naming fares from a point in the United

¹⁶⁸ Rule 50, Tariff Circular 17-A.

¹⁶⁹ *Ibid.*

¹⁷⁰ See note 6, *supra*.

¹⁷¹ Rule 72, Tariff Circular 17-A.

States to a point in Mexico, must be concurred in by the carriers that are parties to the through fares and participate in through transportation thereunder.¹⁷²

If a road in Mexico desires to reserve the contention that it is not amenable to the provisions of the Act to Regulate Commerce or to the jurisdiction of the Commission it may note such reservation on its concurrence.

Divisions must be Filed.

Such tariff must either show the divisions of the fares accruing to the roads in the United States to or from the border or a statement of such divisions of the fares must be filed with the Commission, together with and at the time the tariff itself is filed.¹⁷³

Rule also applies to Canada.

This rule applies in like manner to tariffs containing fares from points in the United States to points in Canada, and also in like manner to tariffs containing fares from points in Mexico to points in the United States or from points in Canada to points in the United States, or from points in Mexico through the United States to points in Mexico, or from points in Canada through the United States to points in Canada, or from points in Mexico through the United States to points in Canada, or from points in Canada through the United States to points in Mexico.¹⁷⁴

§ 661. Letter of Transmittal accompanying Tariffs filed with the Commission.

All tariffs that are filed with the Commission should be accompanied by a letter of transmittal, on paper 8 by 10½ inches in size, and to the following effect:¹⁷⁵

¹⁷² Rule 72, Tariff Circular 17-A.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Rule 51, Tariff Circular 17-A.

[*Name of carrier.*]

General Passenger Department,

[*Date*] , ...

Advice No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

Accompanying schedule is sent you for filing in compliance with the requirements of the Act to Regulate Commerce, issued by, bearing

I. C. C. No.;

Supp. No. to I. C. C. No.;

Effective , 190. .;

and is concurred in by all carriers named therein as participants under continuing concurrences or authorizations now on file with the Interstate Commerce Commission, except the following-named carriers, whose concurrences are attached hereto:

.....
.....
.....

[*Signature of filing agent.*]

A separate letter may accompany each schedule, or the form may be modified to provide for filing under one letter as many schedules as can be conveniently entered.¹⁷⁶

NOTE.—If receipt for accompanying schedule is desired, the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned as receipt.¹⁷⁷

§ 662. Tariffs governing Movement of Passengers to and from Foreign Countries.

¶ A. FARES GOVERNING INLAND HAUL.

The inland carriers of passenger traffic to or from a foreign country *not adjacent*, must publish their fares to the ports and from the ports, and such fares must be the same for all regardless of what ocean carrier may be designated by the passenger.¹⁷⁸

¶ B. THROUGH RATES OR FARES MAY BE SHOWN.

As a matter of convenience to the public carriers may publish in their tariffs such through fares to or from foreign points as they may make in connection with ocean carriers.

¹⁷⁶ Rule 51, Tariff Circular 17-A.

¹⁷⁷ *Ibid.*

¹⁷⁸ Rule 71, Tariff Circular 17-A.

Such tariffs must, however, distinctly state the inland fare as above provided; and need not be concurred in by the ocean carrier, because, concurrence can be required from, and is effective against, only carriers subject to the Act.¹⁷⁹

¶ C. STEAMSHIP CHARGES MAY BE SHOWN.

It is permissible for a carrier to state its inland fares, which must be open to all alike, regardless of what ocean carrier may be designated by the passenger, and regardless of the nationality or employment of the person transported, and in the same connection to show the additional steamship charges which go to make up through fares to or from foreign destinations.¹⁸⁰

¶ D. EVIDENCE OF STEAMSHIP PASSAGE IN CONNECTION WITH INLAND FARES.

If the inland portion of such fares is different from the carrier's domestic fares, and if such inland proportionals are offered only in connection with travel to or from a foreign country, it is entirely proper and necessary that the inland carrier shall require evidence of steamer passage having been paid for before granting to any person its inland proportional fare which its tariff offers in connection with such journey; and to note on separate tickets that may be issued for the inland and the ocean portions of such trip cross references to the other portions of such tickets, and to require satisfactory evidence to be presented to conductor in order to make valid such inland proportional ticket.¹⁸¹

¶ E. STATUTORY NOTICE REQUIRED.

The Commission has ruled that whatever plan of publishing these fares is followed, the tariffs must be filed and posted, and may be changed only upon statutory notice or under special permission for shorter time.¹⁸²

¹⁷⁹ Rule 71, Tariff Circular 17-A.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

CHAPTER XXXV.

INTERCHANGE OF TRAFFIC BETWEEN CONNECTING CARRIERS AND THROUGH OR CONTINUOUS TRANSPORTATION.

SECTION

- 663. Carriers must afford Reasonable, Proper and Equal Facilities for Interchange of Traffic.
- 664. Continuous Carriage of Freights from Place of Shipment to Place of Destination.
- 665. Purpose of Statutes relating to Interchange of Traffic and Continuous Transportation.
- 666. Use of Tracks and Terminal Facilities of Another Carrier.
- 667. Duty of Carriers to exchange, interchange and return Cars.
- 668. Carrier desiring Interchange of Traffic must provide all Necessary Facilities.
- 669. Discrimination in furnishing Facilities for Interchange of Traffic.
- 670. State Statute requiring Track Connection.

§ 663. Carriers must afford Reasonable, Proper, and Equal Facilities for Interchange of Traffic.

The Act provides that every common carrier subject to its provisions shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but that this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.¹

It is the duty of an interstate carrier to receive inter-

¹ Act to Regulate Commerce. Section 3.

state shipments, to issue receipts therefor, to indicate on the waybills the final destinations, and to transport and deliver them to its connecting carriers; and it is the duty of the connecting carriers to transport and deliver at destinations, each carrier charging for its service its legally published rate.²

§ 664. Continuous Carriage of Freights from Place of Shipment to Place of Destination.

The Act provides that it shall be unlawful for any common carrier subject to its provisions to enter into any combination, contract, or agreement, express or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination, and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of the Act.³

§ 665. Purpose of Statutes relating to Interchange of Traffic and Continuous Transportation.

The purpose of the provisions of the third and seventh sections of the Act relating to interchanged traffic was to secure through carriage and the freest possible interchange of traffic along and over all lines and routes where the physical connections and conditions for such interchange exist, both in the interest of commerce and to secure impartial treatment of railroad companies connecting with others.⁴

² Corporation Commission of State of Oklahoma v. C. R. I. & P. Ry. Co. et al. (1910), 17 I. C. C. R. 379.

³ Act to Regulate Commerce. Section 7. See case of Cutting v. Florida Ry. & Nav. Co. (1891), 46 Fed. Rep. 641.

⁴ Ninth Annual Report of I. C. C. (1895).

The right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the States might also choose to impose upon it.

§ 666. Use of Tracks and Terminal Facilities of Another Carrier.

The provision of the Act relating to facilities for interchange of traffic, states that nothing contained therein shall be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.⁵ Such tracks and terminal facilities can only be used by another railroad company for the exchange of interstate freight, with the consent of the carrier owner thereof.⁶

So, where a railroad company has established facilities at a certain place within a city for the interchange of traffic with connecting roads, it is not required, under the Act, to establish facilities at another place in the same city for the interchange of traffic with another road.⁷

§ 667. Duty of Carriers to exchange, interchange and return Cars.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) after providing for the establishment and operation of through routes, requires carriers to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and to provide for responsible compensation to those entitled thereto.

§ 668. Carrier desiring Interchange of Traffic must provide all Necessary Facilities.

A railroad company cannot demand an interchange of traf-

⁵ See note 1, *supra*.

⁶ *Little Rock & M. Rd. Co. v. St. L. I. M. & S. Ry. Co. et al.* (1894), 59 Fed. Rep. 400, affirmed 63 Fed. Rep. 775, 11 C. C. A. 417.

⁷ *Kentucky & I. Brdg. Co. v. L. & N. Rd. Co.* (1889), 37 Fed. Rep. 567, 2 L. R. A. 289, refusing to enforce order of Commission, 2 I. C. C. R. 162; 2 I. C. R. 102.

fic with a connecting carrier without first providing at the point of physical connection reasonable and proper facilities for the interchange sought. Neither can it compel the receiving carrier to go to any expense in providing such facilities.¹¹

§ 669. Discrimination in furnishing Facilities for Interchange of Traffic.

¶ A. DISCRIMINATION BETWEEN CONNECTING LINES FORBIDDEN BY STATUTE.

The Act to Regulate Commerce after commanding common carriers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, forbids any discrimination in the rates and charges between such connecting lines.¹²

¶ B. WHAT CONSTITUTES AN UNLAWFUL DISCRIMINATION.

Whether a carrier is guilty of violating the Act by refusing to afford equal facilities for the interchange of traffic is to be determined by applying all the considerations of equity to the case and should be found to exist only when such facilities can be afforded "under substantially similar circumstances and conditions."¹³

The Act does not require a carrier to furnish to one carrier equal facilities for the interchange of traffic that it furnishes to others where the circumstances and conditions are dissimilar.¹⁴

¶ C. DISCRIMINATION IN EXACTING PREPAYMENT OF CHARGES BY PRECEDING CARRIER.

Section 1 of the Act to Regulate Commerce (*as amended*)

¹¹ See note 6, *supra*.

¹² See note 1, *supra*.

¹³ *New York & N. Ry. Co. v. New York & N. E. Rd. Co.* (1892), 50 Fed. Rep. 867; see s. c., 4 I. C. C. R. 702; 3 I. C. R. 542.

¹⁴ See note 7, *supra*.

June 18, 1910), after providing for the establishment of through routes and just and reasonable rates applicable thereto, requires carriers to make *reasonable* rules and regulations for the operation of such through routes.

Under this provision it would certainly be an undue or unreasonable disadvantage for an interstate carrier to exact from another carrier the prepayment of charges on all property received from it at a given station, where it does not require charges to be paid in advance on freight received from other carriers at such points.

¶ D. DISCRIMINATION IN GRANTING WHARFAGE FACILITIES.

Defendant operated a railroad and a line of steamers between Astoria, Ore., and Shoal Water Bay, Wash. At Ilwaco it had a wharf where the steamers and railroad connected. This, it contended was a private wharf and refused to allow complainant's steamers to land there. *Held*, That Section 3 of the Act contemplates independent carriers besides the offending railroad, capable of mutual relations, and capable of being objects of favor or prejudice, and for a carrier to prefer itself in its own proper business is not the discrimination which is condemned by the statute.¹⁸

¶ E. USE OF TRACKS AND TERMINAL FACILITIES.

A railroad company may permit the use of its tracks and terminal facilities by one carrier to the entire exclusion of others.¹⁹ Such action does not constitute an undue or unreasonable preference or advantage, or unlawful discrimination against such other carriers within the meaning of the Act.²⁰

¹⁸ Ilwaco Ry. & Nav. Co. v. Oregon Short Line & U. N. Ry. Co., 57 Fed. Rep. 673; 6 C. C. A. 495; 15 U. S. App. Rep. 173; 5 I. C. R. 627, reversing 51 Fed. Rep. 611.

¹⁹ See note 8, *supra*.

²⁰ Oregon Short Line & U. N. Ry. Co. v. Nor. Pac. Ry. Co. (1892), 51 Fed. Rep. 465, affirmed 61 Fed. Rep. 158; 9 C. C. A. 409; see also Kentucky & I. Brdg. Co. v. L. & N. Rd. Co. (1889), 37 Fed. Rep. 567, 2 L. R. A. 289, 2 I. C. R. 351.

§ 670. State Statute requiring Track Connection.

The requirement of track connections and facilities for the interchange of cars and traffic at railroad intersections which is made by a State statute does not constitute an unconstitutional regulation of commerce.²¹

²¹ *W. M. & P. Rd. Co. v. Jacobson* (1900), 179 U. S. 287; 45 L. ed. 194, 21 Sup. Ct. 115.

CHAPTER XXXVI.

CONTRACTS, AGREEMENTS AND ARRANGEMENTS BETWEEN COMMON CARRIERS.

SECTION

- 671. Copies of Contracts, Agreements, or Arrangements Between Carriers must be filed with the Commission.
- 672. When Carriers fail to agree on Divisions of Joint Rate the Commission may prescribe Proportion of such Rate to be received by each Carrier.
- 673. Elements to be Considered by the Commission in fixing the Division of Rates between Carriers.
- 674. Copies of Contracts, Agreements, or Arrangements to be Preserved as Public Records in Custody of Secretary of Commission.
- 675. Division of Proceeds of Sale of Shipment to pay Freight Charges.
- 676. Error in Sale of Passenger Tickets.
- 677. Pooling Contracts and Agreements.
- 678. Contracts between Telephone, Telegraph, and Cable Companies and Other Common Carriers.
- 679. Traffic Associations.
- 680. Legalizing Agreements for Rate Publication Recommended.

§ 671. Copies of Contracts, Agreements, or Arrangements Between Carriers must be filed with the Commission.

¶ A. PROVISION OF THE STATUTE.

The Act to Regulate Commerce provides that every common carrier subject to the provisions thereof shall file with the Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of the Act to which it may be a party.¹

¶ B. CONTRACTS AND AGREEMENTS FOR DIVISION OF JOINT RATES AND FARES MUST BE FILED.

A contract, agreement, or arrangement between common

¹ Act to Regulate Commerce. Section 6.

carriers governing the division between them of joint rates or fares on interstate business is a contract, agreement, or arrangement in relation to traffic within the meaning of Section 6 of the Act to Regulate Commerce, and a copy thereof must be filed with the Commission. Where such contract, agreement, or arrangement is verbal or is contained in correspondence between the parties or rests on their custom and practice, a memorandum of its terms must be filed with the Commission.²

Answering many inquiries as to just what is desired under this rule, the Commission stated that when the agreement or arrangement under which divisions are made is in the form of a contract or formal agreement or recorded memorandum, a copy of each such contract, agreement, or memorandum is to be filed with the Commission: Where such agreement is made by correspondence or verbally, a concise memorandum of the basis and general terms and application of the arrangement or practice is to be filed with the Commission. The filing of the division sheets themselves is not desired.³

¶ C. RAILROAD AND TELEGRAPH LINES SUBJECT TO THE GOVERNMENT-AIDED RAILROAD ACT WERE REQUIRED TO FILE COPIES OF THEIR CONTRACTS.

See *Section 753, post*.

§ 672. When Carriers fail to agree on Divisions of Joint Rate the Commission may prescribe Proportion of such Rate to be received by each Carrier.

The statute provides that whenever the carrier or carriers, in obedience to an order of the Commission establishing just and reasonable rates or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be re-

² Rule 209, Con. Rul. Bul. No. 4 (Nov. 16, 1906); Rule 32, Tariff Circular 16-A.

³ *Ibid*.

ceived by each carrier party thereto, which order shall take effect as a part of the original order.⁴

§ 673. Elements to be Considered by the Commission in fixing the Division of Rates between Carriers.

In fixing a division between carriers of joint rates ordered to be established, Section 15 of the Act implies that it is the duty of the Commission to take into consideration all the circumstances, conditions, and equities fairly affecting their several interests, and precludes the idea that the divisions must be adjusted on a mileage or any other fixed basis.

Where a carrier not only furnishes local markets reached by no other road, but also serves a producing territory ample to supply the needs of those markets, no division can in justice be made that does not fully protect its revenues so far as that can be done reasonably and without altogether overlooking the earnings of its connections or withdrawing from producing shippers or consumers their right to the transportation service at reasonable rates.⁵

§ 674. Copies of Contracts, Agreements, or Arrangements to be Preserved as Public Records in Custody of Secretary of Commission.

The Act to Regulate Commerce provides that the copies of all contracts, agreements, or arrangements between common carriers filed with the Commission as provided therein, shall be preserved as public records in the custody of the secretary of the Commission.⁶

§ 675. Division of Proceeds of Sale of Shipment to pay Freight Charges.

A shipment refused by the consignee and upon which demurrage had accrued was sold by the delivering carrier, but did not realize the amount of the transportation charges and the amount paid for unloading. Upon the request of the

⁴ Act to Regulate Commerce. Section 15.

⁵ *Star Grain & Lumber Co. et al. v. A. T. & S. F. Ry. Co. et al.*, 14 I. C. C. R. 364.

⁶ Act to Regulate Commerce. Section 16.

carrier, the Commission declined to express its views as to the manner in which the proceeds of the sale should be divided among the several carriers participating in the movement, that being a matter to be determined by the interested carriers for themselves.⁷

§ 676. Error in Sale of Passenger Tickets.

A station agent inadvertently failed to indorse "Colonist Ticket" on a regular ticket sold upon a published colonist rate. *Held*, That the connecting carriers must be paid their full proportion of the first class rate, but that the Commission would not intervene between the initial carrier and its agent.⁸

§ 677. Pooling Contracts and Agreements.

See *Chapter 38, post*, for full consideration.

§ 678. Contracts between Telephone, Telegraph, and Cable Companies and Other Common Carriers.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) provides that nothing contained therein shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers, for the exchange of services.

§ 679. Traffic Associations.

See *Section 745, post*.

§ 680. Legalizing Agreements for Rate Publication Recommended.

In his recent message to Congress, President Taft said:⁹ "The Republican platform of 1908 expressed the belief that the Interstate Commerce Law should be further amended so as to give the railroads the right to make and publish traffic agreements subject to the approval of the Commission, but

⁷ Rule 41, Con. Rul. Bul. No. 4 (March 3, 1908).

⁸ Rule 69, Con. Rul. Bul. No. 4 (May 4, 1908).

⁹ Message of January 7, 1910.

maintaining always the principal of competition between naturally competing lines and avoiding the common control of those lines by any means whatsoever. In view of the complete control over ratemaking and other practices of interstate carriers, established by the Acts of Congress and as recommended in this communication, I see no reason why agreements between carriers subject to the Act, specifying the classifications of freight and the rates, fares and charges for transportation of passengers and freight should not be permitted, provided copies of such agreements be promptly filed with the Commission but subject to all the provisions of the Interstate Commerce Act and subject to the rights of any parties to such agreement to cancel it, as to all or any of the agreed rates, fares, charges or classifications by thirty days' notice in writing to the other parties and to the Commission."

CHAPTER XXXVII.

CAR PER DIEM CHARGE.

SECTION

681. Origin of the Per Diem Rate for the Use of Equipment.

682. Rate of Per Diem.

683. Per Diem Charge Strictly a Rental.

684. Duty of Carriers to provide Compensation for Use of Foreign Cars.

§ 681. Origin of the Per Diem Rate for the Use of Equipment.

It is not many years since the railroad which originated freight transferred goods at its junctions to the cars of the connecting road. Each railroad was thus made to supply its own equipment. This was an uneconomical and time-wasting method, and so out of their own necessity and to give a prompter service to the shipping public, the railroads developed the practice which generally obtains today of permitting cars to pass onto the track of their connecting roads and making a charge for the use of the equipment.¹ Under this system the present method of hauling freight over several connecting lines has made possible that great body of through transportation which is perhaps the most distinctive feature of American railroading.² The charge assessed for the use of cars was usually fixed at $\frac{3}{4}$ cent per car per mile; the road on whose line the mileage accrued paying the charge to the owner of the car. This car varied, however according to the style and nature of the equipment, viz., a refrigerator car commanded a higher mileage rate than a box or gondola car.

The plan of paying for borrowed equipment by the mile was in force ever since cars began to be sent from one rail-

¹ In the Matter of Car Shortage and other Insufficient Transportation Facilities, 12 I. C. C. R. 561.

² Ibid.

road to another.³ This method, however, led to serious abuses. The owner of the car was powerless either to get his car returned or to test the accuracy of the records by which he was paid for its use, so that cars were often kept out of his possession for months, being used by the consignees as free storehouses for freight, or by the borrowing railroad company in local service at an unreasonably low rental, or as has occurred in consequence of errors in the accounts, without any rental at all.⁴

This state of affairs led the American Railway Association early in the year 1902, to inaugurate a system by which the interchange of freight cars between the different railroads of the country was put on a business basis, a change which appears to be a definite reform and in the interest of efficient service and upright dealing between carriers.⁵

The reform consisted in the adoption of a rule to pay by the day instead of by the mile. The owner can himself keep account of the number of days a car is absent from the home line—thus insuring accuracy; while the fact that a borrowed car must be paid for at the same rate when standing idle as when used in profitable service spurs the borrower to promptly return it when it has completed the service for which it was borrowed. The older plan put a premium on dilatory return, while the new plan puts a premium on prompt return.⁶

The interchange of cars is now almost wholly unrestricted throughout the United States; every road is a constant borrower from and lender to, not only its immediate connections, but from and to lines in distant States.

The owners of the cars are apprised of their various movements and whereabouts by a system of reports rendered by the car accountant or superintendent of car service of the various roads over which the cars move.

³ Sixteenth Annual Report of I. C. C. (1902).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

§ 682. Rate of Per Diem.

The interchange per diem rate is generally 20 cents per car per day.⁷ Some roads charge a penalty in addition to this rate for the detention of the car after the expiration of a certain period. For example, one road charged 20 cents per car per day for only thirty days, and after that time the borrower must pay a dollar a day for its use.⁸

Within this period of thirty days is included all time occupied in transportation without any deduction.⁹

§ 683. Per Diem Charge Strictly a Rental.

As between the railroads the per diem charge is made exclusively for the use of the car.¹⁰ Some railroads are borrowers and others lenders of cars under the present system of interchange which is in vogue between connecting lines and it is hardly credible that the lender would furnish the borrower with equipment for much less than a fair compensation.¹¹

§ 684. Duty of Carriers to provide Compensation for Use of Foreign Cars.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*), after providing that carriers shall make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used in the operation of through routes, makes it the duty of carriers to provide for reasonable compensation to those entitled thereto.

⁷ See note 1, *supra*.

⁸ *Michie v. N. Y. N. H. & H. R. R. Co.* (1907), 151 Fed. Rep. 694.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Kehoe & Co. v. C. & W. C. R. Co.* (1905), 11 I. C. C. R. 166.

CHAPTER XXXVIII.

POOLING CONTRACTS AND AGREEMENTS.

SECTION

- 685. Pooling of Freights and Division of Earnings Forbidden.
- 686. Penalty for Violation of "pooling" Prohibition of the Statute.
- 687. Nature and Varieties of Pools.
- 688. Purpose of Prohibition against pooling.
- 689. Pooling Agreements which are not subject to the Act to Regulate Commerce.
- 690. Agreement for apportioning Immigrant Traffic.
- 691. Attitude of Congress at Time of Passage of Law Prohibiting Pooling.
- 692. Agreement for Maintenance of Rates not governed by Act to Regulate Commerce.
- 693. Establishment of Through Route by Connecting Carriers and Reserving Right to Route Shipments as Condition of Guaranteeing Through Rate not in Violation of the Statute.

§ 685. Pooling of Freights and Division of Earnings Forbidden.

The fifth section of the Act to Regulate Commerce provides:

"That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense."

Any arrangement, oral or otherwise, or combination, which has, for its purpose and eventuates in the pooling of freights of different and competing railroads, is within the prohibition of the Interstate Commerce Act.¹

¹ In *Re Pooling Freights* (1902), 115 Fed. Rep. 588.

The word "freights" as used in the statute means the commodities carried, and not the compensation paid for such carriage.²

§ 686. Penalty for Violation of "pooling" Prohibition of the Statute.

See *Section 777, post*.

§ 687. Nature and Varieties of Pools.

¶ A. POOL DEFINED.

A railroad pool has been defined as an agreement between competing railroads, to apportion the competitive business.³ More precisely, it is an agreement made by several railroads competing for business to allow to each a stated percentage of the whole competing traffic, or of the receipts thereof, together with a mutual guaranty that each road shall receive its share.⁴

¶ B. VARIETIES OF POOLS.

The statute contemplates two methods of pooling, both of which are prohibited:

First, a physical or traffic pool, which means a distribution by the carriers of property offered for transportation among different and competing railroads in proportions and on percentages previously agreed upon;⁵

Second, a money pool, which is described best in the language of the statute, "to divide between them (different and competing railroads) the aggregate or net proceeds of the earnings of such railroads, or any portion thereof."⁶ Under such an arrangement the gross or net earnings, as the case may be, are divided in certain percentages, entirely irrespective of the amount of business which may happen to pass over the several lines.⁷

² *I. C. C. v. Southern Pacific Co. et al.* (1904), 132 Fed. Rep. 829.

³ Final Report of Industrial Commission, Vol. 19.

⁴ "American Railroad Rates," by Judge Walter Chadwick Noyes.

⁵ See note 1, *supra*.

⁶ *Ibid.*

⁷ See note 3, *supra*.

§ 688. Purpose of Prohibition against pooling.

The Interstate Commerce Law was intended to encourage normal competition. It forbids pooling for the very purpose of allowing competition to have effect.⁸

§ 689. Pooling Agreements which are not subject to the Act to Regulate Commerce.**¶ A. CONTRACT BETWEEN WATER CARRIERS.**

The pooling of traffic by water carriers is plainly a matter over which the Interstate Commerce Commission has no jurisdiction, for the Act prohibits pooling only as to "railroads." A pooling of ocean freights or of water freights of any character was evidently not in the mind of Congress when it adopted this provision.⁹

¶ B. CONTRACT BETWEEN PIPE LINE AND RAILROAD.

An agreement for the pooling of traffic between a carrier by rail subject to the Act to Regulate Commerce and a carrier by pipe line does not fall within the description of contracts prohibited by Section 5 of that Act.¹⁰

¶ C. INTRASTATE TRAFFIC.

Traffic carried only within the territorial limits of a State is not interstate in character, and the instrumentality of its transportation is not subject to the provisions of the statute against pooling in respect to such traffic.¹¹

§ 690. Agreement for apportioning Immigrant Traffic.

By mutual agreement between carriers operating from the Atlantic seaboard to western points the immigrant traffic through New York City and other Atlantic ports was divided between such carriers in agreed proportions based upon the

⁸ East Tennessee, Va. & Ga. Ry. Co. v. I. C. C., 99 Fed. Rep. 52, 61, 39 C. C. A. 413.

⁹ Cosmopolitan Shipping Co. v. Hamburg-American Line (1908), 13 I. C. C. R. 266.

¹⁰ Independent Refiners' Assn. v. W. N. Y. & P. Rd. Co. et al. (1892), 5 I. C. C. R. 415; 4 I. C. R. 162.

¹¹ See note 1, *supra*.

proportion of the domestic passenger traffic done by each line. Necessary expenses were apportioned among the lines according to gross earnings on their traffic. Since the passage of the Act to Regulate Commerce there had been no money pool, nor were deficiencies made up by the payment of money differences; the arrangement of distribution was a purely physical one, the immigrants being forwarded in equal proportions by the various trunk lines if their domestic through passenger business had been, approximately, proportionally divided. If any road or roads showed a falling off from their average of general through passenger business, the percentage of immigrant traffic through their territory was only distributed to the extent of making their proportion good, and when that was accomplished it was equally distributed as before. The immigrants were carried from the seaboard at domestic published rates. The arrangement adopted by the carriers in connection with the immigration authorities of the United States for handling immigrant business had efficiently promoted the protection and greatly improved the treatment and comfort of immigrants. The Commission in passing upon the arrangement said:

“Section 5 of the Act to Regulate Commerce provides:

“‘That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of *freights* of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.’

“It will be seen that it was deemed by the authors of the Act essential to provide specifically against a division of freight in kind as well as against the pooling or division of the earnings therefrom, but for some reason they did not provide against a division of passengers between competing roads. The omission to do the latter while doing the former would seem to indicate that it is not improbable that

they deemed the general prohibition in this section against a division between them of the aggregate or net earnings of such railroads, or any portion thereof, would be sufficient to prevent any known or probable method of pooling passenger traffic that was or could be made effective.

“The understanding and intent of legislators may sometimes be gathered from the expressions in debate while the measure is under consideration; and while these are but individual opinions upon construction of language and serve in no case to lend an interpretation or color not consistent with the actual terms of the law, are of service in illustrating the wrongs to be cured and the aims of those who seek to right them.

“The general feeling against pooling arrangements was very bitter immediately preceding and at the time of the passage of the Act. So obnoxious had some of the more aggravated of these conditions become that they were not only severely denounced on several occasions, but the States had been awakened to action against them both in their constitutions and in their courts.

“A list of the more important pools was given by the author of the Reagan Bill in July, 1886, in his presentation of the necessity and purposes of the proposed act for railway regulation. Included in the list was one dated 1879 and another 1885, both of which provided and guaranteed a fund to maintain a pool having for its object the control or division of the westbound passenger traffic as well as of freights, and there was indication that the subject of passenger pools was at least under consideration. Whether the language as finally adopted accomplished the purpose of forbidding all pools, freight or passenger, was a matter upon which there was even then division of opinion.

“In the debate upon the conference report of the two Houses of Congress, a representative from Iowa (Mr. Weaver) insisted that the language of the section referred to freight pools, while a representative from Georgia (Mr. Crisp) was as firm that it also applied ‘if it were the pooling of passenger fares.’ ‘But,’ he added, ‘did the gentleman ever know of a passenger

pool?"—as if it were useless to strive over a theoretical situation.

"It seems clear to us that the section quoted forbids a division of 'the aggregate or net proceeds of the earnings of such railroads or any portion thereof' of competing carriers, whether such earnings arise from freight or passenger business, and that it also forbids a division of freights in kind by any device. But it is not clear that Congress did not regard the division of the passenger traffic in kind as impracticable, and, therefore, not necessary to include within the prohibition. Nor is it believed that such a practice exists or could be made effective in respect to any other class of passenger business, except that of immigrants; and while, as shown, the arrangement under discussion purports to be for the division of westbound passenger traffic, including domestic as well as immigrant, it is also apparent that in its operation there is practically only a distribution or division of the immigrants which, however, is based upon the propositions of the domestic traffic done by each line. This arrangement is no doubt in restraint of competition, and if the question of the reasonableness of the rates was under consideration would have bearing upon that question; but there is no division of the aggregate or net proceeds, or any part thereof, between the lines, unless as is contended, the division of passengers before they have been carried is, in contemplation of law, a division of the earnings therefrom. Against this contention is the fact that there is specific prohibition against the pooling or division of freights and the omission of a like specific provision in respect to passengers. In view of this fact and the further fact that the things forbidden by this section of the Act are made criminal, it is doubtful, at least, whether such a division of the passengers as has been shown to exist under this arrangement is covered by the prohibitions of this section. If the practice was effective in respect to domestic business so as to indicate that it might become extensive, we might feel constrained to resolve the doubt against the practice in an effort to uproot it, for it must be conceded that if it were practicable to make effective such ar-

rangements in respect to all, or a large part of the domestic passenger business, what we understand to be the purposes of the law would be largely defeated, but as above indicated, it is not believed that it can ever be made effective to any considerable extent in the domestic passenger business and it is not improbable that this is the reason that this section was framed at it is.”¹²

§ 691. Attitude of Congress at Time of Passage of Law Prohibiting Pooling.

“In the discussions which preceded the passage of the present law the advocates of Government regulations were entirely agreed as to the gravity and extent of the evils then existing, but there was radical difference of opinion as to whether the legislative remedies to be applied should include a prohibition of those agreements and arrangements between competing carriers which are commonly described as ‘pools.’

“In January, 1886, the Senate Committee on Interstate Commerce said in its report:

“The majority of the committee are not disposed to endanger the success of the methods of regulation proposed for the prevention of unjust discrimination by recommending the prohibition of pooling, but prefer to leave that subject for investigation by the Commission when the effects of the legislation herein suggested shall have been developed and made apparent.

“During the debates in Congress, above referred to, these pooling contracts were criticised with great variety of expression as conspiracies in restraint of trade, as dangerous monopolies, as ‘rings’ and ‘corners.’ They were alleged to have the effect of giving the railroads control of the transportation, commerce, and wealth of the country, and to threaten the liberties of the people by ultimately dominating the measures and policy of the great political parties. It was asserted that such agreements were forbidden by the common law, by the constitutions of many of the States, and by a long line of judicial decisions; that their effect was to substitute monopoly for competition, extortion for reasonable

¹² Re Transportation of Immigrants from New York (1904), 10 I. C. C. R. 13.

rates, and discrimination for equal treatment. It was claimed that the publication of tariffs and the uniformity of charges which other provisions of the law made mandatory would be aided in their beneficial purposes by prohibiting pooling rather than by permitting it; that pools had proven to be expensive, troublesome and demoralizing to operating officials, and that they had often resulted in unremunerative rates between competing points, the losses from which were recouped by excessive charges at local stations. In short, the belief was entertained that the legislation of these agreements was contrary to the general policy of the proposed statute.

“On the other hand, those who advocated some system of pooling contended that if these contracts were controlled by law they would constitute a practical defense against rate-cutting and similar devices; that they sustained and secured reasonable and stable rates; that they were absolutely necessary to avoid bankruptcy in many cases by preventing ruinous competition; that the evils arising from these arrangements were either imaginary or would be cured by the other provisions of the law; that they were simply agreements to apportion competitive business and had nothing to do with the fixing of rates; that they were wanting in the essential characteristics of a pool; that only contracts in total restraint of trade were illegal; that partial and reasonable restraints when founded upon a good consideration were valid, and that such agreements neither enhanced nor depressed prices, nor controlled either production or markets.

“While these differences of opinion existed in both branches of Congress, the argument against legalizing these arrangements seem to have prevailed, and after prolonged discussion, consideration, and conference, the present law was enacted, the fifth section of which expressly prohibits all contracts, agreements, or combinations between carriers for the pooling of freights or the division of traffic earnings.”¹³

¹³ Sixth Annual Report of I. C. C. (1892). See discussion on Pools in Final Report of Industrial Commission, Vol. 19; “American Railroad Rates” by Judge Walter Chadwick Noyes; First Annual Report of I. C. C. (1887).

§ 692. Agreement for Maintenance of Rates not governed by Act to Regulate Commerce.

The fifth section of the Act to Regulate Commerce prohibits what is termed "pooling," but there is no express provision in that Act prohibiting the maintenance of rates among competing roads by making an agreement for that purpose.¹⁴ The Act to Regulate Commerce was not directed to securing uniformity of rates to be charged by competing railroads, and that statute does not authorize competing and nonconnecting roads to make such an agreement.¹⁵

Agreements for the establishment and maintenance of rates between competing roads and agreements for the prevention of competition are in violation of the Sherman Anti-trust Act¹⁶ and the reader is therefore referred to the chapter on that subject, see "*Traffic Association*," Section 745, *post*.

§ 693. Establishment of Through Route by Connecting Carriers and Reserving Right to Route Shipments as Condition of Guaranteeing Through Rate not in Violation of the Statute.

The pooling of freights of competing railroads forbidden by Section 5 of the Act to Regulate Commerce is not accomplished by the adoption by common carriers, as part of an agreement for a through rate from California to the East, for oranges and other citrous fruits, of a rule under which the right of routing beyond its own terminal is reserved to the initial carrier as the condition of guaranteeing the through rates to the shipper, even though the initial carrier promises fair treatment to the connecting lines, and carries out such promise, where such rule has served, as was intended, to

¹⁴ *United States v. Trans-Missouri Freight Association* (1896), 166 U. S. 290, 17 Sup. Ct. Rep. 540, 41 L. ed. 1007, reversing 58 Fed. Rep. 58, 7 C. C. A. 15 and 53 Fed. Rep. 440.

¹⁵ *Ibid*.

¹⁶ "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" (26 Stat. at L. 209, Chap. 647; Rev. Stat. Supp. p. 762), passed July 2, 1890; known as the "Sherman Anti-trust Act."

break up rebating by the connecting lines, and, in its practical operation, the actual routing is generally conceded to the shipper, and his requests to direct shipments en route are usually allowed.¹⁷

¹⁷ *Southern Pacific Company et al. v. I. C. C.* (1905), 200 U. S. 536; 50 L. ed. 585, 26 Sup. Ct. 330, reversing 132 Fed. Rep. 829.

CHAPTER XXXIX.

ACCOUNTS, RECORDS AND MEMORANDA OF COMMON CARRIERS.

SECTION

- 694. Uniform System of Accounts.
- 695. Power of Commission to prescribe Forms of Accounts, Records, etc.
- 696. Access of Commission to Accounts, Records, etc.
- 697. Carriers may not keep other Accounts than Those Prescribed by the Commission.
- 698. Commission may Employ Special Examiners to inspect Accounts and Records of Carriers.
- 699. Punishment of Carrier by Forfeiture for Failure to keep Accounts or Records as Prescribed by Commission or Allow Inspection thereof.
- 700. Punishment of Person for False Entry in Accounts or Records, or Mutilation of Accounts or Records, or for keeping other Accounts than those Prescribed by Commission.
- 701. Punishment of Special Examiner who divulges Facts or Information without Authority.
- 702. Destruction of Accounts, Records and Memoranda.

§ 694. Uniform System of Accounts.

¶ A. POWER OF COMMISSION TO PRESCRIBE UNIFORM SYSTEM OF ACCOUNTS.

The Act to Regulate Commerce provides that the Interstate Commerce Commission, may, in its discretion, for the purpose of enabling it the better to carry out the purposes of the Act, prescribe a period of time within which all common carriers subject to the provisions of the Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.¹

¹ Act to Regulate Commerce. Section 20.

¶ B. UNIFORM RULES OF ACCOUNTING PRESCRIBED.

In the exercise of this authority, the Commission has promulgated detailed accounting rules governing the operations of all common carriers subject to the provisions of the Act to Regulate Commerce. The Commission also issues an Accounting Bulletin which contains a series of questions submitted to the Division of Statistics and Accounts and decisions thereto relating to these rules. None of the accounting rules have been embodied in this book for the reason that it would be without the scope of the work. Anyone interested in this branch of transportation may readily obtain a complete set of these rules upon application to the Interstate Commerce Commission, Division of Statistics and Accounts.

§ 695. Power of Commission to prescribe Forms of Accounts, Records, etc.

The statute provides that the Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of the Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of money.²

§ 696. Access of Commission to Accounts, Records, etc.

The statute provides that the Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to the Act.³

§ 697. Carriers may not keep other Accounts than Those Prescribed by the Commission.

The statute makes it unlawful for any carrier subject to its provisions to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission.⁴

² Act to Regulate Commerce. Section 20.

³ Ibid.

⁴ Ibid.

§ 698. Commission may Employ Special Examiners to inspect Accounts and Records of Carriers.

The Act authorizes the Commission to employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by carriers subject to its jurisdiction.⁵ This provision applies to receivers of carriers and operating trustees.⁶

§ 699. Punishment of Carrier by Forfeiture for Failure to keep Accounts or Records as Prescribed by Commission or Allow Inspection thereof.

See *Section 770, post.*

§ 700. Punishment of Person for False Entry in Accounts or Records, or Mutilation of Accounts or Records, or for keeping other Accounts than those Prescribed by Commission.

See *Section 771, post.*

§ 701. Punishment of Special Examiner who divulges Facts or Information without Authority.

See *Section 772, post.*

§ 702. Destruction of Accounts, Records and Memoranda.

¶ A. WHEN DESTRUCTION OF PAPERS PERMISSIBLE.

The Act as amended February 25, 1909, provides that the Commission may, in its discretion, issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.⁷

⁵ Act to Regulate Commerce. Section 20.

⁶ Ibid.

⁷ Ibid.

¶ B. RECORDS AND MEMORANDA TOUCHING ISSUANCE OF PASSES.

The Commission has enjoined carriers against the destruction of records or memoranda touching the issuance of passes, and the passes themselves, coming into the hands of the carriers after use, for a period of not less than five years until further order of the Commission.⁸

⁸ Rule 95, Con. Rul. Bul. No. 4 (June 30, 1908).

CHAPTER XL.

REPORTS OF CARRIERS TO THE INTERSTATE COMMERCE COMMISSION.

SECTION

- 703. Annual Reports of Carriers to the Interstate Commerce Commission.
- 704. Monthly or Periodical or Special Reports of Carriers to the Interstate Commerce Commission.
- 705. Apportionment of Total Operating Expenses between Freight and Passenger Service not Practicable.
- 706. Before whom Acknowledgments to Reports may be taken.
- 707. Reports of Government-Aided Railroad and Telegraph Lines to the Commission.
- 708. Accident Reports.
- 709. State Railroads engaged in Interstate Commerce required to file Reports.
- 710. State Railroads engaged exclusively in Intrastate Commerce not required to file Reports with Interstate Commerce Commission.
- 711. Person who has severed his Connection with a Railroad Corporation, not required to make Reports.
- 712. Reports of Carriers under the Hours-of-Service Law.
- 713. Copies of Annual Reports of Carriers to be preserved as Public Records in Custody of the Secretary of the Commission.
- 714. Certified Copies of Reports as Prima Facie Evidence.

§ 703. Annual Reports of Carriers to the Interstate Commerce Commission.

¶ A. COMMISSION AUTHORIZED TO REQUIRE ANNUAL REPORTS.

The Act to Regulate Commerce authorizes the Interstate Commerce Commission to require annual reports from all common carriers subject to the provisions of such Act, and from the owners of all railroads engaged in interstate commerce as defined by the Act.¹

¹ Act to Regulate Commerce. Section 20 (as amended June 18, 1910).

In pursuance of this power the Commission requires carriers to render detailed annual reports.²

In respect to filing annual reports, the statute is mandatory, and as it has been repeatedly held by the Supreme Court of the United States that every carrier participating in the carriage of property between interstate points although its physical line is wholly within a single State, is engaged in interstate commerce, all such carriers are within the operation of the statute; it will be seen that under the provisions of the Act, hardly a carrier in the United States is exempt from the requirements to make annual reports to the Commission.³

Under the present method of conducting joint traffic, nearly every railroad, however short its line, unites in making through rates, under which it issues and receives tickets or bills of lading, in connection with roads in other States, upon which passengers and freight are transported across State boundaries; the revenues of every such road are derived, to a greater or less extent, from the traffic which is regulated by the provisions of the Interstate Commerce Law.⁴

¶ B. COMMISSION EMPOWERED TO PRESCRIBE FORM OF ANNUAL REPORTS.

The Act to Regulate Commerce authorizes the Commission to prescribe the manner in which the annual reports of carriers shall be made.⁵

Very soon after its organization, the Commission after long correspondence and consultation with expert accountants, adopted a form of annual report calculated to develop the information required by the Act.

A general basis was found in the provisions of the statute itself. The obligations imposed by State legislatures upon the various State Railroad Commissions were also important.⁶

² Eighth Annual Report of I. C. C. (1894).

³ Seventh Annual Report of I. C. C. (1893).

⁴ Second Annual Report of I. C. C. (1888).

⁵ See note 1, *supra*.

⁶ See note 4, *supra*.

This form with slight modifications, has been retained ever since, and when properly filled elicits the information required. This form is so well adapted to its purpose that it has been adopted by most of the States for the reports which are required from carriers by the laws of the States.⁷

¶ C. COMMISSION MAY REQUIRE ANY INFORMATION DESIRED.

The Commission is authorized to require from carriers specific answers to all questions upon which it may need information.⁸

¶ D. WHAT ANNUAL REPORTS SHALL CONTAIN.

The statute requires that annual reports of carriers shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balance of profit and loss; and a complete exhibit of all the financial operations of the carrier each year, including an annual balance sheet.⁹

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the Commission by order substitute that period for the year ending June thirtieth.¹⁰

The effect of this section of the Act, relative to annual reports, is to require every carrier to furnish a full and com-

⁷ See note 3, *supra*.

⁸ See note 1, *supra*.

⁹ *Ibid*.

¹⁰ *Ibid*.

plete history of the corporate organization, stock, and securities; its property, cost and value; its income, expenses, debts, and fixed charges; in short, a full exact history of the property controlled and a detailed exhibit by items of the business and financial operations for the year.¹¹

Before the passage of the Act to Regulate Commerce private enterprises had collected the figures representing the financial and business operations of railroads, but they were not furnished under the requirements of law, and therefore not subject to governmental supervision. While probably correct in the main they still lack the authenticity which attaches to sworn reports required by positive enactment. Some of the States also required sworn returns to their own officers but these reports, not embracing operations outside of the State, were of only local importance.¹²

A bureau of the Department of the Interior had for some years previous to the year 1887, been engaged in the collection of statistical information in great detail from a large number of important roads which received aid from the United States in the form of land grants and subsidies; but as stated, these statistics were confined to the Government-aided lines.¹³

The carriers themselves were accustomed to collate and present annually, for the use of directors and stockholders, information in more or less detail concerning the workings of their respective lines. Some of the information which it has been the custom of intelligently managed corporations to tabulate and make public, is of special value to their own officials and subordinates in securing the economical working of their lines, and in adjusting transportation charges; and the importance of statistics of this character is many times increased by an opportunity for comparison between results obtained upon different lines in the same or in different sections of the country. However, these reports naturally were limited in their scope and could not be said to be authentic.

¹¹ See note 3, *supra*.

¹² *Ibid*.

¹³ See note 4, *supra*.

The Senate Select Committee in its report to Congress recognized the importance of reliable and accurate information for the use of investors in railroad securities—a class of the community whose almost sole dependence in the years previous to the passage of the Act had been the unofficial though painstaking annual compilation by private enterprise of a manual,¹⁴ the great circulation of which demonstrated the necessity for its existence.¹⁵

The framers of the Act of 1887 foresaw that minute annual reports would not only be of great aid to the Commission in the performance of its duties, but also that they would be of great interest to the public generally.¹⁶

It is apparent that it was the purpose of Congress to inaugurate an annual collection of statistics, which should faithfully present the entire transactions of every railroad in the United States for the preceding year, and that the information so obtained should be authoritative and trustworthy.¹⁷

Commission may Require Additional Information.

Such reports shall also contain such information in relation to rates or regulations concerning fares or freights or agreements, arrangements or contracts affecting the same as the Commission may require.¹⁸

¶ E. WHEN ANNUAL REPORTS ARE TO BE FILED.

The annual reports as stated above, must be made out under oath and filed with the Commission, at its office in Washington, within three months after the close of the year for which the report is made.¹⁹

¹⁴ Poor's Manual of the Railroads of the United States.

¹⁵ See note 4, *supra*.

¹⁶ See note 3, *supra*.

¹⁷ See note 4, *supra*.

¹⁸ See note 1, *supra*.

¹⁹ *Ibid*.

¶ F. COMMISSION MAY EXTEND TIME FOR FILING REPORTS.

The statute gives the Commission authority to grant additional time in any case for the filing of annual reports.²⁰

¶ G. PUNISHMENT BY FORFEITURE FOR FAILURE TO FILE ANNUAL REPORT.

See *Section 769, Paragraph A, post.*

§ 704. Monthly or Periodical or Special Reports of Carriers to the Interstate Commerce Commission.

¶ A. COMMISSION MAY REQUIRE MONTHLY REPORTS.

The Commission has authority by general or special orders to require any carrier subject to the Act to file monthly reports of earnings and expenses.²¹

¶ B. COMMISSION MAY REQUIRE PERIODICAL OR SPECIAL REPORTS.

The Commission has authority by general or special orders to require any carrier subject to the Act to file periodical or special, or both periodical and special, reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires.²²

Under the authority to require special reports, the Division of Statistics and Accounts in the year 1907 made an investigation into the intercorporate relations of legally independent carriers, organized into systems for the purpose of unified and concentrated control and management, its prime purpose being to make clear the extent and character of intercorporate relationship.²³

²⁰ See note 1, *supra*.

²¹ See note 1, *supra*.

²² *Ibid*.

²³ Twenty-First Annual Report of I. C. C. (1907).

¶ C. CARRIERS' MONTHLY REPORTS TO BE FURNISHED IN
DUPLICATE.

The Commission has ordered that beginning as of January 1, 1908, monthly reports of revenues and expenses as provided for in the order of the Commission, bearing date July 10, 1907, shall be filed in duplicate, and on or before the last day of the month immediately following the month covered by the report shall be deposited in the United States Post-Office, postage prepaid, and plainly addressed to the Division of Statistics and Accounts, Interstate Commerce Commission, Washington, D. C.²⁴

¶ D. PUNISHMENT BY FORFEITURE FOR FAILURE TO FILE
MONTHLY OR SPECIAL REPORTS.

See *Section 769, Paragraph A, post.*

**§ 705. Apportionment of Total Operating Expenses between
Freight and Passenger Service not Practicable.**

Expert railway accountants agree generally that the proportions of the total operating expenses assignable to freight and passenger service cannot be ascertained or ever fairly estimated.

The Commission formerly required carriers to report estimates of the cost of the two services according to the freight and passenger mileage after assignment of those expenses belonging exclusively to each of the two great divisions of traffic, but this requirement was discontinued by the Commission after careful consideration and as the immediate result of the investigation and report by a committee of the National Association of Railway Commissioners in 1892, which found the apportionment of expenses to be merely an arbitrary division and without value, and stated that the opinions of the railway accounting officers were practically unanimous in favor of discontinuing the attempt to apportion expenses between passengers and freight traffic.²⁵

²⁴ Rule 30, Con. Rul. Bul. No. 4 (Jan. 15, 1908).

²⁵ Consolidated Forwarding Co. v. Southern Pacific Co. et al. (1905), 10 I. C. C. R. 590.

§ 706. Before whom Acknowledgments to Reports may be taken.

The oath required by the statute as aforesaid may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.²⁶

§ 707. Reports of Government-Aided Railroad and Telegraph Lines to the Commission.

See *Section 754, post*.

§ 708. Accident Reports.

¶ A. MONTHLY REPORTS OF RAILWAY ACCIDENTS.

The statute makes it the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate or foreign commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all collisions, derailments, or other accidents resulting in injury to persons, equipment, or roadbed arising from the operation of such railroad under such rules and regulations as may be prescribed by the said Commission, which report shall state the nature and causes thereof and the circumstances connected therewith, *Provided*, that all said carriers shall be relieved from the duty of reporting accidents in their annual financial and operating reports made to the Commission.²⁷

¶ B. FAILURE TO MAKE REPORT WITHIN THIRTY DAYS AFTER END OF EACH MONTH A MISDEMEANOR.

See *Section 769, Paragraph A, post*.

¶ C. REPORTS NOT TO BE USED IN EVIDENCE AGAINST THE CARRIER.

The statute provides that neither said report nor any part thereof shall be admitted as evidence or used for any purpose against such railroad so making such report in any suit or

²⁶ See note 1, *supra*.

²⁷ Section 1. Accident-Reports Act, approved May 6, 1910.

action for damages growing out of any matter mentioned in said report.²⁸

¶ D. COMMISSION TO PRESCRIBE FORM OF REPORT.

The Interstate Commerce Commission is authorized to prescribe for the common carriers subject to the provisions of the statute a method and form for making the reports as stated above.²⁹

¶ E. PURPOSE OF ACCIDENT REPORTS.

By the statute³⁰ referred to above the Commission is required to gather statistics of all collisions and derailments on railroads doing interstate business, and of accidents to passengers and to employees on duty; the railroad companies are required to report the accidents, stating the nature and cause, in reports of such form as the Commission shall prescribe.³¹

The Commission in one of its annual reports to Congress³² stated: "The primary object of the statute is, obviously, to promote the safety of passengers and of railroad employes; and this object is to be accomplished, so far as these records can accomplish it, by making the most instructive exhibit possible of those accidents which are preventable. Experience has shown that some classes of accidents, including many personal casualties in which the person injured is himself chiefly at fault, occur in such uniform percentages, year after year, in proportion to the total number of persons employed (or, in the case of passengers, to the total number transported), that they may be looked upon as unavoidable. These, under the Act, are now reported to the Commission in large numbers; yet it is not apparent that any useful purpose would be subserved by publishing the details of cases of this kind, as is attempted by some public authorities."

²⁸ Section 4. Accident-Reports Act, approved May 6, 1910.

²⁹ Section 5. Accident-Reports Act, approved May 6, 1910.

³⁰ Accident-Reports Act, approved May 6, 1910—Public No. 165.

³¹ Fifteenth Annual Report of I. C. C. (1901).

³² Ibid.

§ 709. State Railroads engaged in Interstate Commerce required to file Reports.

Under the Act to Regulate Commerce, as amended June 29, 1906, a carrier by railroad operating entirely within a State becomes subject to the provisions of the Act if it engages in interstate transportation, although it has entered into no arrangement with any other carrier by railroad or water for the movement of traffic between points upon its line and points without the State.

The movement of freight from a point in one State to a point in another State by rail must be regarded as an entirety and every road participating in that movement thereby becomes subject to the Act to Regulate Commerce even though its service is performed entirely within a single State.³⁴

A railroad company whose road lies entirely within the limits of a single State becomes subject to the Act to Regulate Commerce by participating in a through movement of traffic from a point in the one State to a point in the State within which it is located, although its own service is performed entirely within the latter State.³⁵ Such common carriers therefore are required to file their annual reports with the Interstate Commerce Commission.

§ 710. State Railroads engaged exclusively in Intrastate Commerce not required to file Reports with Interstate Commerce Commission.

A railroad lying wholly within a State, which transports freight, whether coming from within or without the State, solely on local bills of lading, under special contract limited to its own line and without dividing charges with any other carrier or assuming any other obligations to or for them, does not come within the provisions of the Interstate Commerce Act and is not bound to make any report of its business to the Interstate Commerce Commission.³⁶

³⁴ Leonard v. K. C. S. Ry. Co. et al. (1908), 13 I. C. C. R. 573.

³⁵ Baer Bros. Merc. Co. v. Mo. Pac. Ry. Co. et al. (1908), 13 I. C. C. R. 329.

³⁶ United States, ex rel. Interstate Commerce Commission, v. Chicago, K. & S. R. Co. (1897), 81 Fed. Rep. 783.

A railroad company whose line is wholly within a single State, and which, although it carries freight to points beyond such State, never issues bills of lading to points beyond its own line, receives no freight on through bills of lading, and has no arrangement with other roads for a conventional division of charges, or for a common control or arrangement is not within the purview of the Act to Regulate Commerce and need not file its annual report with the Interstate Commerce Commission.³⁷

§ 711. Person who has severed his Connection with a Railroad Corporation, not required to make Reports.

Where a writ of mandamus, commanding a railway company to make out its annual report, is served on the secretary and treasurer, who shows that he has not the possession of the books necessary to enable him to make out the report and that he has resigned, and is no longer connected with the railroad, a motion to commit for contempt is denied.³⁸

§ 712. Reports of Carriers under the Hours-of-Service Law.

The Commission has held that in as much as the Act to Regulate Commerce empowers the Commission, in the administration of that law, to require reports under oath, a similar authority may lawfully be exercised by the Commission in the execution of the Hours-of-Service Law.³⁹

§ 713. Copies of Annual Reports of Carriers to be preserved as Public Records in Custody of the Secretary of the Commission.

The statute provides that the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of the Act, shall be preserved as public records in the custody of the secretary of the Commission.⁴⁰

³⁷ *I. C. C. v. Bellaire, Z. & C. Ry. Co.* (1897), 77 Fed. Rep. 942.

³⁸ *United States ex rel. Interstate Commerce Commission v. Seaboard Ry. Co. of Alabama* (1898), 85 Fed. Rep. 955.

³⁹ *Twenty-Second Annual Report of I. C. C.* (1908).

⁴⁰ *Act to Regulate Commerce. Section 16.*

§ 714. Certified Copies of Reports as Prima Facie Evidence.

The statute provides that the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, and preserved in the custody of the secretary, shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said reports, made public records as stated above, certified by the secretary under its seal, shall be received in evidence with like effect as the originals.⁴¹

⁴¹ Act to Regulate Commerce. Section 16.

CHAPTER XLI.

COMMODITIES CLAUSE.

SECTION

715. Provision of the Statute Prohibiting Railroad Carriers from Transporting Commodities in which they are Interested.

716. Constitutionality and Interpretation of the Statute.

§ 715. Provision of the Statute Prohibiting Railroad Carriers from Transporting Commodities in which they are Interested.

The Act to Regulate Commerce as amended June 29, 1906, provides that:¹

“From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.”

§ 716. Constitutionality and Interpretation of the Statute.

The Supreme Court of the United States in holding the above statute constitutional and construing its terms, held,² that:

¹ Act to Regulate Commerce. Section 1. (34 Stat. at L. 584, Chap. 3591, U. S. Comp. Stat. Supp. 1907, p. 892.)

² United States, ex rel. Attorney General, v. Delaware & Hudson Co. (1909), 213 U. S. 366, 53 L. ed. 836, 29 Sup. Ct. 527, reversing 164 Fed. Rep. 215, in which the Circuit Court of Appeals decided against the constitutionality of the provision, because, as it was alleged, it deprived the corporations of their liberty and of their property.

The dissociation of railway companies prior to transportation from the articles or commodities transported, whether such association results from manufacture, mining, production, or ownership, or interest, direct or indirect, is the common purpose of the provisions of the Hepburn Act of June 29, 1906, making it unlawful for a railway carrier to transport in interstate commerce, articles or commodities "manufactured, mined, or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect."

Transportation when the thing to be transported has been manufactured, mined, or produced by the carrier or under its authority, and at the time of transportation the carrier has not, in good faith, before the act of transportation, dissociated itself therefrom, or when the carrier owns the thing to be transported, in whole or in part, or when the carrier, at the time of transportation, has an interest therein, direct or indirect, in a legal or equitable sense, is all that is forbidden by the provisions of the Hepburn Act of June 29, 1906, making it unlawful for a railway carrier to transport in interstate commerce, articles or commodities "manufactured, mined, or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect."

The ownership by a railway carrier of stock in a *bona fide* corporation manufacturing, mining, producing, or owning the commodity carried is not the "interest, direct or indirect," in such commodity, forbidden to the carrier by the Hepburn Act of June 29, 1906, but such words are to be taken as embracing only a legal or equitable interest in the commodities to which they refer.

Congress could properly enact, as a regulation of commerce, so much of the Hepburn Act of June 29, 1906, as forbids a railway carrier from transporting articles or commodities in interstate commerce when such article or commodity has been manufactured, mined, or produced by the carrier, or under its authority, and, at the time of transportation such carrier has not in good faith, before the act of trans-

portation, dissociated itself therefrom, or when the carrier owns the article or commodity to be transported, in whole or in part, or when the carrier, at the time of transportation, has an interest therein, direct or indirect, in a legal or equitable sense, although, by existing state legislation, such carrier may have a lawful right of ownership of or association with the articles or commodities upon which these provisions operate.

Railway companies enjoying the right, under existing state legislation, of ownership of or association with the articles or commodities carried, are not denied the due process of law guaranteed by the United States Constitution, Fifth Amendment, by so much of the provision of the Hepburn Act of June 29, 1906, as forbids a railway carrier from transporting articles or commodities in interstate commerce when such article or commodity has been manufactured, mined, or produced by the carrier or under its authority, and, at the time of transportation, such carrier has not, in good faith, before the act of transportation, dissociated itself therefrom, or when the carrier owns the article or commodity to be transported, in whole or in part, or when the carrier, at the time of transportation, has an interest therein, direct or indirect, in a legal or equitable sense.

Exception in Favor of Timber and Manufactured Products thereof.

The exception in favor of timber and manufactured products thereof, contained in the provisions of the Hepburn Act of June 29, 1906, forbidding railway carriers from transporting in interstate commerce, articles or commodities with which they are associated, or in which they are interested, does not render the statute invalid for discrimination.

The following is a summary of Mr. Justice White's decision :

"1. The claim of the Government that the provisions contained in the Railroad Rate Act approved June 29, 1906, commonly called the commodities clause, prohibits a railway company from moving commodities in interstate commerce because the company has manufactured, mined, or produced them, or owned them in whole or in part, or has had an in-

terest, direct or indirect, in them wholly irrespective of the relation or connection of the carrier with the commodities at the time of transportation, is decided to be untenable. It is also decided that the provision of the commodities clause relating to interest, direct or indirect, does not embrace an interest which a carrier may have in a producing corporation as the result of the ownership by the carrier of stock in such corporation irrespective of the amount of stock which the carrier may own in such corporation, provided the corporation has been organized in good faith.

"2. Rejecting the construction placed by the Government upon the commodities clause, it is decided that that clause, when all its provisions are harmoniously construed, has solely for its object to prevent carriers engaged in interstate commerce from being associated in interest at the time of transportation with the commodities transported, and therefore the commodities clause only prohibits railroad companies engaged in interstate commerce from transporting in such commerce commodities under the following circumstances and conditions:

"(a) When the commodity has been manufactured, mined, or produced by a railroad company or under its authority, and at the time of transportation the railroad company has not, in good faith, before the act of transportation, parted with its interest in such commodity.

"(b) When the railroad company owns the commodity to be transported in whole or in part.

"(c) When the railroad company, at the time of transportation, has an interest, direct or indirect, in a legal sense in the commodity, which last prohibition does not apply to commodities manufactured, mined, produced, owned, etc., by a corporation because a railroad company is a stockholder in such corporation. Such ownership of stock in a producing company by a railroad company does not cause it, as the owner of the stock, to have a legal interest in the commodity manufactured, etc., by the producing corporation."³

³ For press comments on the Supreme Court decision, see summary in "The Literary Digest" May 15, 1909, issue.

CHAPTER XLII.

HOURS-OF-SERVICE LAW.

SECTION

- 717. Context of the Hours-of-Service Law.
- 718. Purpose of the Law.
- 719. Passage of the Act.
- 720. Scope of the Law.
- 721. Sixteen Hours the Maximum Continuous Service of Trainmen.
- 722. Ten Consecutive Hours off Duty after having been Sixteen Consecutive Hours on Duty.
- 723. Eight Consecutive Hours off Duty after having been on Duty Sixteen Hours in the Aggregate.
- 724. Service Hours of Telegraph and Telephone Operators.
- 725. Twenty-Four-Hour Service Period defined.
- 726. Term "Employee" defined.
- 727. Employés of Carriers to whom Provisions of Law are not Applicable.
- 728. Employés delayed in the Service caused by Casualty or Unavoidable Accident or Act of God.
- 729. Employés who are "Deadheading" are not within the Meaning of the Law.
- 730. Electric Lines which are Interstate Carriers.
- 731. Ferry Employés.
- 732. Crews of Wrecking or Relief Trains.
- 733. Jurisdiction of Interstate Commerce Commission over the Enforcement of the Law.
- 734. Administrative Relief from the Requirements of the Law.
- 735. Penalty for Violation of the Law by Carriers.
- 736. Reports of Carriers to the Commission.

§ 717. Context of the Hours-of-Service Law.

For provisions of the Hours-of-Service Law,¹ see *Appendix*, 23.

§ 718. Purpose of the Law.

The incidents immediately preceding the passage of the Hours-of-Service Law and the circumstances connected with

¹ 34 Statutes at Large 1415, approved March 4, 1907.

and surrounding its adoption leave little doubt as to the purpose of Congress to minimize the dangers incident to railroad travel, by preventing men from being overworked. Of course the period for which railroad employes may, without hardship, perform their duties varies with their physical condition, but the hours of service prescribed by the Act are such as the legislature has, from experience and observation, learned that men of their calling and in their ordinary state of health may consistently observe.

The object of the Act, therefore, is to limit the periods of time in which railroad employes may be required or permitted to remain on duty.²

§ 719. Passage of the Act.

The Hours-of-Service Law³ was approved March 4, 1907, at 11:50 A. M., and was made to take effect and be in force one year after its passage.

§ 720. Scope of the Law.

The law is applicable to every common carrier subject to the Act to Regulate Commerce and to every employé concerned in the physical operation of such company's trains.⁴

§ 721. Sixteen Hours the Maximum Continuous Service of Trainmen.

The Act provides that it shall be unlawful for any common carrier, its officers or agents, subject to the Act to require or permit any employé to be or remain on duty for a longer period than sixteen consecutive hours.⁵

§ 722. Ten Consecutive Hours off Duty after having been Sixteen Consecutive Hours on Duty.

The Act provides that whenever any employé of any common carrier subject to its provisions, shall have been on duty for sixteen hours he shall be relieved and not required or per-

² Twenty-Second Annual Report of I. C. C. (1908).

³ See note 1, *supra*.

⁴ See note 2, *supra*.

⁵ Section 2 of Law.

mitted again to go on duty until he has had at least ten consecutive hours off duty.⁶

The requirement for ten consecutive hours off duty applies only to such employés as have been on duty for sixteen consecutive hours.⁷

§ 723. Eight Consecutive Hours off Duty after having been on Duty Sixteen Hours in the Aggregate.

The Act provides that no such employé who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.⁸

The requirement for eight consecutive hours off duty applies only to employés who have not been on duty sixteen consecutive hours but have been on duty sixteen hours in the aggregate out of a twenty-four-hour period.⁹

§ 724. Service Hours of Telegraph and Telephone Operators.

The Act contains a proviso that no operator, train dispatcher or other employé who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week.¹⁰

A "week" means a calendar week, beginning with Sunday.¹¹

⁶ Section 2 of Law.

⁷ See note 2, *supra*.

⁸ Act. Section 3.

⁹ See note 2, *supra*.

¹⁰ See note 8, *supra*.

¹¹ See note 2, *supra*.

A telegraph or telephone operator who is employed in a night and day office may not be required to perform duty in any capacity or of any kind beyond nine hours of total service in any twenty-four-hour period.¹²

§ 725. Twenty-Four-Hour Service Period defined.

A twenty-four-hour period begins when the employé goes on duty after an interim of not less than eight consecutive hours off duty.¹³

Time "on duty" includes the entire period of service or responsibility therefor,¹⁴ and does not mean a continuous cycle of time without intermission.^{14a}

§ 726. Term "Employee" defined.

The Act defines the term "employee" to mean persons actually engaged in or connected with the movement of trains.¹⁵ This includes train dispatchers.^{15a}

§ 727. Employés of Carriers to whom Provisions of Law are not Applicable.

The specific proviso of the law in regard to hours of service is:

"That no operator, train dispatcher, or other employee who, by the use of the telegraph or telephone, dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements, shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional

¹² See note 2, *supra*.

¹³ *Ibid*.

¹⁴ *Ibid*.

^{14a} *A. T. & S. F. Ry. Co. v. United States* (1910), 177 Fed. Rep. 114.

¹⁵ Hours-of-Service Law. Section 1.

^{15a} *A. T. & S. F. Ry. Co. v. United States* (1910), 177 Fed. Rep. 114.

hours in a twenty-four-hour period on not exceeding three days in any week.”¹⁶

These provisions apply to employés in towers, offices, places, and stations, and do not include train employees, who by the terms of the law are permitted to be or remain on duty sixteen hours consecutively or sixteen hours in the aggregate in any twenty-four-hour period, and who may occasionally use telegraph or telephone instruments for the receipt or transmission of orders affecting the movement of trains.¹⁷

§ 728. Employés delayed in the Service caused by Casualty or Unavoidable Accident or Act of God.

The Act provides that its provisions shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employé at the time said employee left a terminal and which could not have been foreseen.¹⁸

Any employé so delayed may therefore continue on duty to the terminal or end of that run. The proviso quoted removes the application of the law to that trip.¹⁹

The above exemptions prescribed by the law contemplate only such accidents as could not by the exercise of diligence on the part of the carriers, their agents or officers, have been anticipated and prevented.²⁰

§ 729. Employés who are “Deadheading” are not within the Meaning of the Law.

Employés “deadheading” on passenger trains or on freight trains and not required to perform, and not held responsible for the performance of, any service or duty in connection with the movement of the train upon which they are “deadhead-

¹⁶ See note 5, *supra*.

¹⁷ Rule 88, Con. Rul. Bul. No. 4 (June 25, 1908).

¹⁸ See note 8, *supra*.

¹⁹ See note 17, *supra*.

²⁰ Rule 108, Con. Rul. Bul. No. 4 (November 10, 1908).

ing," are not, while so "deadheading," "on duty" as that phrase is used in the Act regulating the hours of labor.²¹

§ 730. Electric Lines which are Interstate Carriers.

Upon inquiry whether the Hours-of-Service Law applies to electric street car lines which are interstate carriers: *Held*, That it applies to all railroads subject to the provisions of the Act to Regulate Commerce, as amended, including street railroads when engaged in interstate commerce.²²

§ 731. Ferry Employés.

The Hours-of-Service Law does not apply to employés on a ferry, even though the ferry be owned by a railroad company. The law applies to employees connected with the movement of trains, and hence does not embrace employés engaged only in the operation of a ferry. This ruling does not apply to car ferries.²³

§ 732. Crews of Wrecking or Relief Trains.

The provisions of the Hours-of-Service Law do not apply to the crews of wrecking or relief trains.²⁴

§ 733. Jurisdiction of Interstate Commerce Commission over the Enforcement of the Law.

It is the duty of the Interstate Commerce Commission to execute and enforce the provisions of the Hours-of-Service Act.²⁵

The fourth section of the Act provides that:

" * * * All powers granted to the Interstate Commerce Commission are hereby extended to it in the execution of this Act."

It is understood, and so maintained by the Commission, that Congress, in using this expression intended to confer for the

²¹ Rule 74, Con. Rul. Bul. No. 4 (May 5, 1908).

²² Rule 56, Con. Rul. Bul. No. 4 (April 7, 1908).

²³ See note 20, *supra*.

²⁴ See note 5, *supra*.

²⁵ Hours-of-Service Law. Section 4.

enforcement of the Hours-of-Service Law each and every power previously granted to the Commission.²⁶

§ 734. Administrative Relief from the Requirements of the Law.

The Georgia Southern & Florida Railway Company on January 15, 1908, filed its petition with the Interstate Commerce Commission for relief from the requirements of the law under the proviso clause of Section 2 of the Act.²⁷

The petition asked that operators and agents at three of its stations after handling train orders for nine hours or less, may then be required to work a sufficient numbers of hours as clerks or otherwise to complete twelve hours in each twenty-four hours; that agents at six stations who handle very few train orders or messages may be required to remain on duty from thirteen to fifteen hours, and that an agent and operator may be allowed to divide the time during which the office at one station is kept open. The general showing as to each of these nine stations, and the only grounds upon which as to them an extension of time was asked, was the ease with which the entire service of the company was performed by two men at each station and the needless expense of increasing the number. There was no allegation that the company had insufficient funds to pay an increased force of men as may have been necessary to keep those offices open the same as at the time of the petition and comply with the limitation upon the hours of labor imposed by the Act in question.

Knapp, chairman, in delivering the opinion of the Commission denying the petition for relief, said:

"It is entirely clear to us that this petition under the most liberal interpretation of the facts set forth, presents no case for administrative relief, temporary or otherwise, from the requirements of this law.

"The only authority conferred upon the Commission in this regard is expressed as follows:

²⁶ See note 2, *supra*.

²⁷ In re G. S. & F. Ry. Co. (1908), 13 I. C. R. 134.

"The Interstate Commerce Commission may after full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

"The proviso referred to is that part of Section 2 which provides that no employee who handles train orders by telegraph or telephone shall be required or permitted to be on duty more than nine hours out of the twenty-four at offices continually operated night and day, nor more than thirteen hours out of the twenty-four at offices operated 'only during the daytime,' except in case of emergency, when four additional hours may be required on not more than three days in any week. *No other provision of the law can be extended or modified by the Commission.*

"The power to extend under the proviso is extremely limited. This is evident from the plain import of the language above quoted, from the context to which it relates and from the obvious purpose of the entire enactment. It seems clear to us that nothing more was intended than to authorize the Commission, in exceptional instances where conditions are unusual or unforeseen, to enlarge somewhat the time allowed to prepare for compliance. Conditions which are common to many railroads or to a substantial percentage of telegraph stations are conditions which must have been taken into account when this law was passed and do not constitute 'a particular case' for relief by the Commission.

"We are, therefore, of the opinion that the petition filed by this company does not show 'good cause' for extending the period within which it shall comply with the law at the several stations named, because it sets forth no exceptional or peculiar conditions which render observance impracticable at any of these stations, but merely alleges a state of facts tending to show that the law *ought not to be there enforced* on account of the small number of train orders and messages handled and the absence of any need or occasion for increasing the force of telegraphers. This is purely a question of legislative policy which was and must have been determined by the Congress adversely to the company and the Commission has no right or authority to postpone the taking effect of the Act merely because compliance with its provisions will involve inconvenience and financial hardship. The situation at the stations in question, as described in the petition, is in no sense unusual or of recent origin. It is a situation with which the Congress was well acquainted when the law was enacted for it is practically identical with the situation which has long existed for years at hundreds if not thousands of stations and has long been a matter of common knowledge.

The Act was passed with full understanding that conditions substantially the same as these here considered were so numerous in nearly every part of the country as to be characteristic of railway practice, and the law was evidently intended to apply at stations of this familiar type. To extend the time allowed for compliance at this class of stations, for extension in this case logically involves like extensions in all similar cases, would practically nullify the law during the period of postponement as to a large percentage of the employees for whose benefit the law was enacted, and presumably deprive the traveling public meanwhile of the added safeguard against accident which the law was designed to secure. The purpose of this enactment and the intention to give it application to all employees who handle train orders, whether much or little of their time is occupied with that duty, are so clear and explicit as not to be open to question. It is equally clear that the authority of the Commission to grant an extension was intentionally limited to instances of special and unforeseen conditions. It was plainly not contemplated that conditions which are common and well known, which are so frequently found on every railway as to comprise a recognized class, should be regarded as a sufficient basis for administrative relief."

§ 735. Penalty for Violation of the Law by Carriers.

See *Section 778, post.*

§ 736. Reports of Carriers to the Commission.

The Commission has held that inasmuch as the Act to Regulate Commerce empowers the Commission, in the administration of that law, to require reports under oath, a similar authority may lawfully be exercised by the Commission in the execution of the Hours-of-Service Law.²⁸

²⁸ See note 2, *supra*.

CHAPTER XLIII.

EMPLOYERS' LIABILITY ACT.

SECTION

737. An Act relating to Liability of Common Carriers in the District of Columbia and Territories and Common Carriers engaged in Commerce between the States and between the States and Foreign Nations to their Employees—Passed June 11, 1906.
738. Employers' Liability Act of June 11, 1906, declared Unconstitutional.
739. An Act relating to the Liability of Common Carriers by Railroad to their Employees in certain Cases.—Passed April 22, 1908.
740. Recovery for Loss to Family.
741. Liability for Injuries within the Territories.

This chapter on the Employers' Liability Act has been incorporated in this work, not because the Interstate Commerce Commission has any jurisdiction in the premises, but because of its kindred relation to the subject under discussion and of the principles involved.

§ 737. An Act relating to Liability of Common Carriers in the District of Columbia and Territories and Common Carriers engaged in Commerce between the States and between the States and Foreign Nations to their Employees¹—Passed June 11, 1906.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or Foreign nations, shall be liable to any of its employees, or, in case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages

¹ Act of Congress of June 11, 1906 [34 Statutes at Large, 232, C, 3073].

which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

Section 2. That in all actions hereafter brought against any common carrier to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

Section 3. That no contract of employment, insurance, relief benefit or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative.

Section 4. That no action shall be maintained under this Act, unless commenced within one year from the time the cause of action accrued.

Section 5. That nothing in this Act shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three.

§ 738. Employers' Liability Act of June 11, 1906, declared Unconstitutional.

In deciding the Employers' Liability Cases,² the United States Supreme Court, per Mr. Justice White, said:

"It remains only to consider the contention that the Act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating control of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely

² Howard, *Admx. v. Ill. Cent. Rd. Co. et al.* (1908), 207 U. S. 463; 52 L. ed. 297, 28 Sup. Ct. 141; see *El Paso & N. R. Co. v. Gutierrez* (1909), 215 U. S. 87, 54 L. ed. —, 30 Sup. Ct. 21.

State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution and would destroy the authority of the States as to all conceivable matters which from the beginning have been and must continue to be under their control so long as the Constitution endures. * * *

"Concluding as we do, that the statute, whilst it embraces subjects within the authority of Congress to regulate commerce, also includes subjects not within its constitutional power, and that the two are so interblended in the statute that they are incapable of separation, we are of the opinion that the Courts below rightly held the statute to be repugnant to the Constitution and nonenforceable; and the judgments below are, therefore, affirmed."

Mr. Justice Peckham, concurring, stated: "I concur in the proposition that as to traffic or other matters, within the State, the Act is unconstitutional, and it cannot be separated from that part which is claimed to be valid as relating to interstate commerce."

Chief Justice Fuller and Mr. Justice Brewer agreed in the concurring opinion.

**§ 739. An Act relating to the Liability of Common Carriers by Railroad to their Employees in certain Cases³—
Passed April 22, 1908.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That every common carrier by railroad, while engaging in commerce between any of the

³ Act of Congress of April 22, 1908 [35 Statutes at Large, 65, C. 149]. This Act was declared constitutional in *Walsh v. N. Y. N. H. & H. R. Co.* (1909), 173 Fed. Rep. 494.

several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such common carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Section 2. That every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then to such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Section 3. That in all actions hereafter brought against such common carrier by railroad, under or by virtue of any of the provisions of this Act to recover damages for personal injuries to any employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided*, that no such employee that may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

Section 4. That in any action brought against any common carrier under or by virtue of any of the provisions of this Act to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier or any statute enacted for the safety of employees contributed to the injury or death of such employee.

Section 5. That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this Act, shall to that extent be void: *Provided*, That in any action brought against any such common carrier under or by virtue of any of the provisions of this Act, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled on account of the injury or death for which said action is brought.

Section 6. That no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued.

Section 7. That the term "common carrier," as used in this Act, shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

Section 8. That nothing in this Act shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other act or acts of Congress, or to affect the prosecution of any pending proceeding or right of action under the Act of Congress entitled "An Act Relating to Liability of Common Carriers in the District of Columbia and Territories, and to Common Carriers Engaged in Commerce Between the States and Between the States and Foreign Nations to Their Employees," approved June eleventh, nineteen hundred and six.

§ 740. Recovery for Loss to Family.

In an action for the death of a railroad brakeman under the Employers' Liability Act providing that the recovery shall inure to the benefit of the deceased's family, an instruction permitting a recovery for the loss sustained by decedent's children consisting of their loss of care, attention, instruction and training, from their father's death, was not erroneous.⁴

§ 741. Liability for Injuries within the Territories.

That part of the Employers' Liability Act which makes common carriers by railroad within the territories of the United States liable for injuries to employees as therein stated, supersedes the common law in the territories with respect to such liability, and any cause of action within its terms is necessarily one arising under the laws of the United States, and on that ground within the jurisdiction of a Federal Court, where the requisite amount is involved.⁵

⁴ *Duke v. St. Louis & S. F. R. Co.* (1909), 172 Fed. Rep. 684.

⁵ *Cound v. A. T. & S. F. Ry. Co.* (1909), 173 Fed. Rep. 527.

CHAPTER XLIV.

SHERMAN ANTI-TRUST LAW.

SECTION

742. The Commission is without Authority to administer the "Sherman Anti-trust Law."
743. Suits to Enforce the "Anti-trust Act" only cognizable by the Courts.
744. "Sherman Anti-trust Law" cannot be resorted to, to sustain a Proceeding to Enjoin Rebating.
745. Traffic Associations.

§ 742. The Commission is without Authority to administer the "Sherman Anti-trust Law."

The Commission has no authority to administer the "Anti-trust Law," or even to determine whether it has been violated. If an investigation discloses a violation of that law, the power of the Commission is not enlarged nor its duty changed in respect to the rate involved in the inquiry.¹ The violation of the so-called anti-trust act by unwarranted agreements in restraint of trade by carriers of interstate commerce is not within the jurisdiction of the Commission but only the correction of unreasonable rates which may be the purpose and effect of such illegal act.²

§ 743. Suits to Enforce the "Anti-trust Act" only cognizable by the Courts.

Any action for the violation of the "Anti-trust Act" or a proceeding for the enforcement thereof is only cognizable by the Federal Courts.³

¹ Sprigg et al. v. B. & O. Rd. Co. et al. (1900), 8 I. C. C. R. 443.

² Warren Mfg. Co. et al. v. Southern Rwy Co. et al., 12 I. C. C. R. 381.

³ Central Yellow Pine Association v. Illinois Central Rd. Co. et al. (1905), 10 I. C. C. R. 505. Tift et al. v. Southern R. Co. et al., 10 I. C. C. R. 548 (1905).

§ 744. "Sherman Anti-trust Law" cannot be resorted to, to sustain a Proceeding to Enjoin Rebating.

The Interstate Commerce Act and the Act known as the "Sherman Anti-trust Law"⁴ are separate and independent Acts, not germane in character and purpose; and therefore jurisdiction in the Circuit Court of the United States over a bill in equity to enjoin a railroad company from granting rebates to favored shippers cannot be maintained upon the ground that such act of the railroad company is a monopoly within the meaning of the second section of said Anti-trust Act.⁵

§ 745. Traffic Associations.⁶

¶ A. AGREEMENTS FOR MAINTENANCE OF RATES.

A contract between competing railroads relating to traffic rates for the transportation of articles of commerce between the States, the direct effect of which is to produce a restraint of the Act of Congress of July 2, 1890,⁷ declaring that every contract, combination, in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is illegal.⁸

Competing and nonconnecting railroads are not authorized by the Act to Regulate Commerce to make an agreement of maintenance of rates and the curbing of competition.⁸

All combinations in restraint of trade or commerce are prohibited by the Anti-trust Act, which Act was intended to cover common carriers by railroad.⁸

The right of a railroad company to charge reasonable rates

⁴ Act, July 2, 1890, C. 647, 26 Stat. 209, Chap. 647 (U. S. Comp. St. 1901, p. 3200).

⁵ U. S. v. A. T. & S. F. Ry. Co. (1905), 142 Fed. Rep. 176.

⁶ See important recommendations and comments of Interstate Commerce Commission to Congress in its Twelfth Annual Report, 1898.

⁷ See note 4, supra.

⁸ United States v. Trans-Missouri Freight Association (1896), 166 U. S. 290, 17 Sup. Ct. Rep. 540, 41 L. ed. 1007, reversing 58 Fed. Rep. 58, 7 C. C. A. 15, and 53 Fed. Rep. 440.

does not include the right to enter into a combination with competing roads to maintain reasonable rates.

An agreement between railroad companies "for the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic, both through and local" is by its necessary effect an agreement to restrain trade or commerce within the meaning of the Anti-trust Act, no matter what the intent was on the part of those who signed it.

The Court said:

What one company may do in the way of charging reasonable rates is radically different from entering into an agreement with other and competing roads to keep up the rates to that point. If there be any competition the extent of the charge for the service will be seriously affected by that fact. Competition will itself bring charges down to what may be reasonable, while in the case of an agreement to keep up prices competition is allowed no play; it is shut out, and the rate is practically fixed by the companies themselves by virtue of the agreement, so long as they abide by it.⁹

¶ B. AGREEMENTS TO PREVENT COMPETITION.

An agreement between railroad companies which directly and effectually prevents competition is, under the statute,¹⁰ in restraint of trade, notwithstanding the possibility that a restraint of trade might also follow unrestricted competition; which might destroy weaker roads and give the survivor power to raise rates.¹¹

The Court said that ordinary freedom of contract in the use and management of their property did not require

the right to combine as one consolidated and powerful association for the purpose of stifling competition among themselves, and of thus keeping their rates and charges higher than they might otherwise be under the laws of competition. And this is so, even though the rates provided for in the agreement may for the time be not more than are reasonable. They may easily and at any time be increased. It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all matters over which the combination extends, that constitutes the alleged evil, and in regard to which, so far as the combination operates upon and restrains interstate commerce, Congress has power to legislate and to prohibit.¹¹

⁹ U. S. v. Trans-Missouri Freight Ass'n, 166 U. S. 290, 17 Sup. Ct. 540, 41 L. ed. 1007.

¹⁰ See note 4, *supra*.

¹¹ United States v. Joint-Traffic Association (1898), 171 U. S. 505, 19 Sup. Ct. Rep. 25, 43 L. ed. 259, reversing 76 Fed. Rep. 895.

CHAPTER XLV.

GOVERNMENT-AIDED RAILROAD AND TELEGRAPH COMPANIES.

SECTION

- 746. Equal Facilities required—Discrimination forbidden.
- 747. Complaints to Interstate Commerce Commission.
- 748. Duty of Commission when Complaint is made.
- 749. How Order of Commission is enforced.
- 750. Commission may institute Inquiries on its Own Motion.
- 751. Penalties for Failure to Comply with Orders of Commission.
- 752. Action for Damages may be brought.
- 753. Railroad and Telegraph Lines subject to Act were Required to File Copies of their Contract.
- 754. Reports of Government-Aided Railroad and Telegraph Lines to the Commission.
- 755. Duty of Commission to inform Attorney-General of Violations of Act.

By the Act of Congress approved August seventh, eighteen hundred and eighty-eight, entitled "An Act supplementary to the Act of July first, eighteen hundred and sixty-two, entitled, 'An Act to aid in the construction of a railroad and telegraph lines from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' and also of the Act of July second, eighteen hundred and sixty-four, and other Acts amendatory of said first-named Act," certain powers and duties in relation to those lines were devolved upon the Commission as follows.

§ 746. Equal Facilities required—Discrimination forbidden.

The second section of the Government-Aided Railroad Act¹ provides that the railroad and telegraph companies referred to in the first section thereof are required to allow such con-

¹ Public No. 237, approved August 7, 1888.

nection to be made and to so operate their respective telegraph lines as to afford equal facilities to all without discrimination; and to receive, deliver and exchange business with connecting telegraph lines on equal terms, affording equal facilities without discrimination for or against any one of such connecting lines; and such exchange of business to be on terms just and reasonable.

§ 747. Complaints to Interstate Commerce Commission.

The third section provides that if any railroad or telegraph company referred to in the first section, or company operating such railroad or telegraph line, shall refuse or fail, in whole or in part, to maintain and operate a telegraph line as required by law, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then complaint may be made to the Interstate Commerce Commission, whose duty it shall be, under such rules and regulations as the Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, the railroad or telegraph company concerned to abide by and perform such order.

§ 748. Duty of Commission when Complaint is made.

The statute makes it the duty of the Interstate Commerce Commission when such determination and orders are made to notify the parties concerned.²

§ 749. How Order of Commission is enforced.

The order of the Commission may, if necessary, be enforced by writ of mandamus in the Courts of the United States, in the name of the United States, at the relation of either of the Interstate Commerce Commissioners.³

² Section 3, Government-Aided Railroad Act.

³ See note 1, *supra*.

§ 750. Commission may institute Inquiries on its Own Motion.

The statute empowers the Commissioners to institute any inquiry, upon their own motion, in the same manner and with the same effect as though complaint had been made.*

§ 751. Penalties for Failure to Comply with Orders of Commission.

The statute provides⁵ that any officer or agent of such Government-aided railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse to abide by, or perform and carry out within a reasonable time the order or orders of the Interstate Commerce Commission, shall in every case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum not exceeding one thousand dollars, and may be imprisoned not less than six months.

§ 752. Action for Damages may be brought.

In every such case of refusal or failure as stated above, the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted as stated above, but may bring an action for damages sustained thereby against the company whose officer or agent may be guilty thereof, in the Circuit or District Court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit, processes may be served upon any agent of the company found in such State or Territory, and such service shall be held by the Court good and sufficient.⁶

§ 753. Railroad and Telegraph Lines subject to Act were Required to File Copies of their Contract.

The Government-Aided Railroad Act passed August 7, 1888, compelled each and every of the railroad and telegraph com-

* See note 1, *supra*.

⁵ Section 5, Government-Aided Railroad Act.

⁶ *Ibid*.

panies subject to its provisions to file with the Interstate Commerce Commission within sixty days after the passage of said Act, copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines, for property over or upon its right of way.⁷

§ 754. Reports of Government-Aided Railroad and Telegraph Lines to the Commission.

¶ A. DUTY OF CARRIER TO FILE ANNUAL REPORTS.

The statute makes it the duty of each and every one of the Government-aided railroad and telegraph companies to annually report to the Interstate Commerce Commission, with reasonable fulness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year.⁸

¶ B. SPECIAL REPORT.

The Government-Aided Railroad Act which was passed August 7, 1888, ordered carriers subject to its provisions to file with the Interstate Commerce Commission, a report describing with sufficient certainty, the telegraph lines and property belonging to it, and in the manner in which the same were being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporations claimed to have a title or interest, and setting forth the grounds of such claim, and the manner in which the same were being then used and operated.⁹

⁷ Section 6, Government-Aided Railroad Act.

⁸ Ibid.

⁹ Ibid.

¶ C. COMMISSION AUTHORIZED TO PRESCRIBE SYSTEM OF REPORTS
AND TIME OF FILING SAME.

The statute authorizes the Interstate Commerce Commission to prescribe a system of reports and the manner in which they shall be filed, also the time of filing the same.¹⁰

¶ D. PENALTY FOR REFUSAL TO MAKE REPORTS TO THE
COMMISSION.

The statute provides that if any such railroad or telegraph company shall refuse or fail to make such reports or any report as may be called for by the Commission, or refuse to submit its books or records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars to be recovered by the Attorney-General of the United States, in the name and for the use and benefit of the United States.¹¹

§ 755. Duty of Commission to inform Attorney-General of
Violations of Act.

The statute makes it the duty of the Interstate Commerce Commission to inform the Attorney-General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures provided for above.¹²

¹⁰ Section 6, Government-Aided Railroad Act.

¹¹ Ibid.

¹² Ibid.

CHAPTER XLVI.

PENALTIES AND FORFEITURES FOR VIOLATIONS OF THE LAW.

SECTION

- 756. Penalty of Carrier for issuing or giving free Transportation in Violation of the Statute.
- 757. Penalty of Person using Free Transportation in Violation of the Statute.
- 758. Misdemeanor to offer, grant, give, solicit, accept or receive any Rebate from Published Rates or Other Concession or Discrimination and Penalty therefor.
- 759. Penalties for Violation of Act by Carriers, or when the Carrier is a Corporation, its Officers, Agents, or Employees.
- 760. Penalty for False Billing, False Classification, False Weighing, etc., by Carrier or its Agent.
- 761. Penalty for False Representation by Shipper or its Agent whereby Property is Transported at Less than Regular Tariff Rates.
- 762. Penalty for Inducing Common Carrier to Discriminate Unjustly.
- 763. Carrier Corporation as well as Officer or Agent, liable to Conviction for Misdemeanor, and Penalty Therefor.
- 764. Act of Officer or Agent to be also deemed Act of Carrier.
- 765. Forfeiture, in addition to other Prescribed Penalty, of Three Times Amount of Money and Value of Consideration Illegally Received shall be paid to the United States.
- 766. Failure of Carrier to publish Rates or observe Tariffs a Misdemeanor and Penalty therefor.
- 767. Penalty for Failure of Carrier to comply with Tariff Regulations promulgated by Commission.
- 768. Penalty for Carrier's Refusal or Omission to quote Rate to Shipper or Misstatement of Same, where Damages result.
- 769. Punishment by Forfeiture for Failure of Carriers to File Reports.
- 770. Punishment of Carrier by Forfeiture for Failure to Keep Accounts or Records as Prescribed by the Commission or Allow Inspection of Accounts or Records.
- 771. Punishment of Person for False Entry in Accounts or Records, or Mutilation of Accounts or Records, or for Keeping other Accounts than those Prescribed by the Commission.
- 772. Punishment of Special Examiner who divulges Facts or Information without Authority.

SECTION

773. Penalty of Person neglecting or refusing to attend and Testify before the Commission.
774. Penalty of Carrier or its Agents for unlawfully disclosing any Information concerning Freight transported.
775. Penalty of Person unlawfully soliciting Information concerning Freight of Other Shippers.
776. Failure to obey Order of Commission and Penalty therefor.
777. Penalty for Pooling of Freights and Division of earnings.
778. Penalty of Carrier for Violation of Hours-of-Service Law.
779. Penalty for Violation of Safety-Appliance Act.
780. Penalty for Violation of Ash-Pan Act.
781. Penalties for Violations of the Transportation-of-Explosives Act.

§ 756. Penalty of Carrier for issuing or giving free Transportation in Violation of the Statute.

The Act provides that any common carrier issuing or giving interstate free transportation in violation of the provisions thereof, shall be deemed guilty of a misdemeanor and for each offense on conviction, shall pay to the United States a penalty of not less than one hundred nor more than two thousand dollars.¹

§ 757. Penalty of Person using Free Transportation in Violation of the Statute.

The Act states that any person who unlawfully uses any interstate free ticket, free pass, or free transportation, shall be subject to the same penalty as is the carrier issuing or giving the same, i. e., shall pay to the United States a penalty of not less than one hundred nor more than two thousand dollars.²

Where a common carrier issues an interstate free pass to an employee who delivers the pass to a person not authorized to receive or use it and the said party uses the same on an interstate journey he violates the Act to Regulate Commerce as amended June 29, 1906, and the employee delivering such pass is guilty of aiding and abetting in said violation.³

¹ Act to Regulate Commerce. Section 1.

² Ibid.

³ United States v. Williams, 159 Fed. Rep. 310.

§ 758. Misdemeanor to offer, grant, give, solicit, accept or Receive any Rebate from Published Rates or other Concession or Discrimination and Penalty therefor.

The Elkins Act provides:⁴ "It shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to Regulate Commerce and the Acts amendatory thereof, whereby any such property shall by any device whatever, be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to Regulate Commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*, That any person, or any officer, or director of any corporation subject to the provisions of this Act, or the Act to Regulate Commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years or both such fine and imprisonment, in the discretion of the Court."⁵

§ 759. Penalties for Violation of Act by Carriers, or when the Carrier is a Corporation, its Officers, Agents, or Employés.

The Act to Regulate Commerce provides that any common carrier subject to its provisions, or, whenever such common

⁴ Elkins Act. Section 1.

⁵ Elkins Act, Section 1.

carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter, or thing in the Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in the Act required to be done, or shall cause or willingly suffer, omit, or fail to do any act, matter, or thing, so directed or required by the Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of the Act, for which no penalty is otherwise provided, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the Court.⁶

§ 760. Penalty for False Billing, False Classification, False Weighing, etc., by Carrier or its Agent.

The Act to Regulate Commerce provides that any common carrier subject to its provisions, or whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and wilfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for prop-

⁶ Act to Regulate Commerce, Section 10, as amended June 18, 1910.

erty at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.^{6a}

§ 761. Penalty for False Representation by Shipper or its Agent whereby Property is Transported at Less than Regular Tariff Rates.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of the Act, or for whom, as consignor or consignee, any such carrier shall transport property who shall knowingly and wilfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and wilfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim; certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage

^{6a} Act to Regulate Commerce, Section 10, as amended June 18, 1910.

or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.^{6b}

§ 762. Penalty for Inducing Common Carrier to Discriminate Unjustly.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that if any person, or any officer or agent of any corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of the Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and that such person, corporation, or company shall also, together with said common carrier, be

^{6b} Act to Regulate Commerce, Section 10, as amended June 18, 1910.

liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.^{6c}

§ 763. Carrier Corporation, as well as Officer or Agent, liable to Conviction for Misdemeanor, and Penalty Therefor.

The Elkins Act provides:⁷ "That anything done or omitted to be done by a corporation common carrier, subject to the Act to Regulate Commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changed."

§ 764. Act of Officer or Agent to be also deemed Act of Carrier.

In construing and enforcing the above provisions of the Elkins Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person.⁸

§ 765. Forfeiture, in addition to other Prescribed Penalty, of Three Times Amount of Money and Value of Consideration Illegally Received shall be paid to the United States.

The Elkins Act provides that,⁹ "Any person, corporation, or

^{6c} Act to Regulate Commerce, Section 10, as amended June 18, 1910.

⁷ See note 4, supra.

⁸ See note 4, supra.

⁹ *Ibid.*

company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer or otherwise directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this Act, shall, in addition to any penalty provided for by this Act, forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court, * * * and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be."

§ 766. Failure of Carrier to publish Rates or observe Tariffs a Misdemeanor and Penalty Therefor.

The Elkins Act provides that the willful failure upon the part of any carrier subject to the Act to Regulate Commerce and Acts amendatory thereof, to file and publish the tariffs of rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof, the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense.¹⁰

¹⁰ See note 4, *supra*.

§ 767. Penalty for Failure of Carrier to comply with Tariff Regulations promulgated by Commission.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that in case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under the provisions of Section 6 of the Act, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil suit brought by the United States.^{10a}

§ 768. Penalty for Carrier's Refusal or Omission to quote Rate to Shipper or Misstatement of Same, where Damages result.

Section 6 of the Act to Regulate Commerce (*as amended June 18, 1910*) reads as follows:

"If any common carrier subject to the provisions of this Act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

^{10a} Section 6 of Act, as amended June 18, 1910.

§ 769. Punishment by Forfeiture for Failure of Carriers to File Reports.

¶ A. ANNUAL AND MONTHLY REPORTS.

The statute provides, that, if any carrier, person, or corporation subject to its provisions shall fail to make and file its annual reports as prescribed in Section 20 of the Act within the time specified therein or within the time extended for making and filing the same, or shall fail to make specific answer to any question authorized by said section within thirty days from the time it is lawfully required so to do such party shall forfeit to the United States in the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto.¹¹

The above forfeiture also is imposed upon carriers who fail to file monthly reports of earning and expenses or special reports within a specified period, as may be required by the Commission.¹²

¶ B. ACCIDENT REPORTS.

The Accident-Reports Act provides that any common carrier failing to make its report within thirty days after the end of any month shall be deemed guilty of a misdemeanor and, upon conviction thereof, by a Court of competent jurisdiction, shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time specified for making the same.¹³

§ 770. Punishment of Carrier by Forfeiture for Failure to Keep Accounts or Records as Prescribed by the Commission or Allow Inspection of Accounts or Records.

The Act provides that in case of failure or refusal on the part of any carrier receiver, or trustee to keep such accounts, records, and memoranda on the book and in the manner pre-

¹¹ Act to Regulate Commerce. Section 20.

¹² Ibid

¹³ Accident-Reports Act. Section 2.

scribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in the Act.¹⁴

§ 771. Punishment of Person for False Entry in Accounts or Records, or Mutilation of Accounts or Records, or for Keeping other Accounts than those Prescribed by the Commission.

The Act provides that any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify, the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any Court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment.¹⁵

§ 772. Punishment of Special Examiner who divulges Facts or Information without Authority.

The statute provides that any examiner who divulges any fact or information which may come to his knowledge during the course of any examination, except in so far as he may be directed by the Commission or by a Court of the United States

¹⁴ See note 11, *supra*.

¹⁵ *Ibid*.

of competent jurisdiction, shall be subject to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.¹⁶

§ 773. Penalty of Person neglecting or refusing to attend and Testify before the Commission.

The statute provides that any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a Court of competent jurisdiction shall be punished by fine of not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.¹⁷

§ 774. Penalty of Carrier or its Agents for unlawfully disclosing any Information concerning Freight transported.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) reads as follows:

“It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may

¹⁶ See note 11, *supra*.

¹⁷ Immunity of Witnesses Act.

be so used: *Provided*, That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

“Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.”

§ 775. Penalty of Person unlawfully soliciting Information concerning Freight of Other Shippers.

See *Section 774, supra*.

§ 776. Failure to obey Order of Commission and Penalty therefor.

The Act to Regulate Commerce provides, that, any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of Section 15 of the Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense and in case of a continuing violation, each day shall be deemed a separate offense.¹⁸

The statute provides that the above forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal

¹⁸ Act to Regulate Commerce. Section 16.

operating office, or in any district through which the road of the carrier runs.¹⁹

§ 777. Penalty for Pooling of Freights and Division of Earnings.

Carriers entering into a pooling agreement are subject to the general forfeitures provided for in the statute, except that each day of the continuance of such agreement shall be deemed a separate offense.²⁰

§ 778. Penalty of Carrier for Violation of Hours-of-Service Law.

The Hours-of-Service Act provides that any common carrier subject to the provisions thereof, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the second section thereof, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation.²¹

§ 779. Penalty for Violation of Safety-Appliance Act.

The Safety-Appliance Act provides that any common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line, any car in violation of any of the provisions of such Act, shall be liable to a penalty of one hundred dollars for each and every such violation.²²

§ 780. Penalty for Violation of Ash-Pan Act.

The statute provides that any common carrier using any locomotive in interstate or foreign commerce, not equipped with an ash pan as provided therein shall be liable to a penalty of two hundred dollars for each and every such violation.²³

¹⁹ Act to Regulate Commerce. Section 16.

²⁰ Act to Regulate Commerce. Section 5.

²¹ Hours-of-Service Act. Section 3.

²² Safety-Appliance Acts. Section 6.

²³ Ash-Pan Act. Section 3 (approved May 30, 1908, Public No. 165).

§ 781. Penalties for Violations of the Transportation-of-Explosives Act.

The statute provides that whoever shall knowingly violate, or cause to be violated any of the provisions of the Transportation-of-Explosives Act, or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both.²⁴

The law further provides that when the death or bodily injury of any person is caused by the explosion of any article named in the Act, while the same is being placed upon any vessel or vehicle to be transported in violation thereof, or while the same is being so transported, or while the same is being removed from any such vessel or vehicle, the person knowingly placing, or aiding or permitting the placing, of such articles upon any such vessel or vehicle, to be so transported, shall be imprisoned not more than ten years.²⁵

²⁴ Transportation of Explosives Act. Section 235.

²⁵ Transportation of Explosives Act. Section 236.

CHAPTER XLVII.

PROCEDURE AND PRACTICE BEFORE THE INTERSTATE COMMERCE COMMISSION.

SECTION

782. Nature of Complaints before the Commission { Formal.
Informal.
783. Sessions of the Commission { General.
Special.
784. Commission may prescribe Form of Procedure.
785. Seal of the Commission.
786. Commissioners may administer Oaths and Affirmations.
787. Commissioners may sign Subpoenas.
788. Number of Commissioners constituting a Quorum.
789. Persons Claiming to be Damaged may elect whether to Complain to the Commission or Bring Suit in a United States Court.
790. Complaints to the Commission.
791. Power of Commission to restrain Enforcement of New Rate, Fare, Charge, or Classification, or Regulation or Practice affecting Same pending Investigation.
792. Preference to be given to Hearings involving Reasonableness of Rates.
793. Appearance of Parties.
794. Persons interested in Matters involved in Cases before Commission may be made Parties.
795. Attendance and Testimony of Witnesses and Production of Documentary Evidence.
796. Rehearing.
797. Orders of Commission.
798. Limitation of Actions before the Commission.
799. Docket of the Commission.
800. Commission may upon its Own Initiative enter upon Hearing concerning Propriety of New Rate, Fare, Charge, Classification, or Regulation.
801. Power of Commission to inquire into Business of Carriers and keep itself Informed in Regard thereto.
802. Commission required to execute and enforce the Provisions of the Act to Regulate Commerce.
803. Institution of Inquiries by the Commission of its own Motion.
804. Commission as a Board of Arbitration.

SECTION

805. Effect of Amendment of June 18, 1910, upon Powers of Commission over pending Cases.

806. Rules of Practice before the Commission in Cases and Proceedings under the Act to Regulate Commerce.

It is not the purpose of the author to touch upon procedure before the Interstate Commerce Commission further than to give the specific provisions of the law relating thereto, which, together with the rules of practice before the Commission as promulgated by that body, will convey a general idea of the subject. Any detailed discussion of that subject would be beyond the scope and purpose of this work.

§ 782. Nature of Complaints before the Commission { Formal.
Informal.

¶ A. DIVISION OF COMPLAINTS.

The work of the Commission which pertains directly to regulation involves two distinct kinds of procedure: One based upon formal petitions filed with the Commission under Section 13 of the law, and involving regular hearing and investigation, the preparation of a report setting forth the material facts found and conclusions reached by the Commission, and issuance of an order dismissing the case or directing the carrier or carriers complained against, to correct the rate or practice which may be held unlawful. The other kind of procedure arises in the performance by the Commission of its duty, under the twelfth section, to "execute and enforce the provisions of the Act," and relates to complaints presented by letter, the examination of tariffs on file in the office in connection with such complaints, and correspondence with shippers and carriers concerning the same. Complaints of the latter class are called informal complaints to distinguish them from the formal petitions or complaints which constitute the basis of contested cases.

¶ B. FORMAL COMPLAINTS.

Formal proceedings before the Commission are usually in-

stituted after the shipper and carrier have failed to reach a settlement or upon facts developed in a preliminary inquiry by the Commission. The result is that these formal cases are generally stoutly contested, and in some of the more important several hearings, producing voluminous records of testimony and argument, are often required.¹

It is probably near the truth to say that the cases before the Commission directly or indirectly affect almost every locality, and therefore nearly all of the people of the United States. Some of these proceedings involve very large interests, others present issues of comparatively trifling importance to the general public, while a few are based upon matters relating to individual claims. The questions presented in such cases relate to the unreasonableness of rates, discriminations in rates between persons, or as between commodities, discrimination between shippers in furnishing cars, undue preference of various descriptions of one person or locality over another person or locality, overcharges, unjust demurrage charges, pooling, and disregard of the law in the publication of tariffs. These general characterizations embrace a great variety of cases arising under differing conditions, each presenting new phases of the transportation problem growing out of facts peculiar to the situation of the complaining shipper or locality, and circumstances surrounding the traffic.

Cases which in themselves present demands for slight relief often bring up important as well as novel questions of law and procedure, and the reported decisions in these cases are capable of citation as precedents in future proceedings.

The complaints very frequently contain demands for damages, and decisions rendered in favor of complainants in such cases often include an award of reparation. In this connection it should be noted that Section 9 of the Act to Regulate Commerce requires the complaining shipper to elect whether he will bring his case for damages in consequence of an alleged violation of the statute in the Federal Courts or before the Commission. It follows that when he elects to pur-

¹ Fifteenth Annual Report of I. C. C. (1901).

sue his remedy in a proceeding before the Commission, alleging violation of the law and claiming damages, he cannot thereafter bring suit for damages in a Court upon the same cause of action.

In cases where wrongful discrimination or preference is claimed to exist, through an unjust relation of rates, complaints usually also allege the higher rate complained of to be unreasonable, and it often happens that the rates may appear unjustly related because the higher charge is unreasonable, indicating the proper method of securing a readjustment of the related rates to be an order forbidding the higher charge.²

¶ C. INFORMAL COMPLAINTS.

The formal hearings and investigations constitute only a portion, and by no means the greater portion, of the administrative work of the Commission. Informal hearings, conferences, correspondence with shippers and with carriers relating to numerous transportation questions constantly arising and the adjustment of such questions without formal complaint necessarily require considerable time and careful attention. More differences between shippers and carriers, many of which arise from mistakes or misunderstanding, are disposed of or satisfactorily arranged through the intervention of the Commission than by formal complaint.³

The main object of this method of procedure is the speedy disposition, through settlements, readjustments plainly required by the statute, or advice given by the Commission, of matters in which regulation is demanded, and thus to limit the number of contested cases upon the docket. It would be an injustice to complaining shippers and communities, amounting frequently to denial of relief, to compel the institution of a regular proceeding every time cause of complaint is brought to the attention of the Commission; and the number of cases requiring the hearing of witnesses, oral or written argument, and formulated decision would probably be

² Eighteenth Annual Report of I. C. C. (1904).

³ Third Annual Report of I. C. C. (1889).

greater than the Commission could dispose of properly or without intolerable delays. The great mass of complaints are handled and disposed of by the Commission by preliminary investigation and correspondence or conference with carriers and shippers.*

The increased power vested in the Commission by the amendments to the Act of 1906, has naturally led to a multiplication of the number of complaints presented by letter, and these complaints relate to every conceivable subject connected with the rates, methods, practices, and service of interstate carriers.

A fair conception of the work performed by the Commission in the field of regulation is not possible without reference to the results attained in respect to these cases in which formal complaint is not filed, nor proceedings of a formal nature pursued by the complainant. The public is not advised to the full extent of the work accomplished in securing, through correspondence, the voluntary adjustment by carriers of questions in dispute relating to interstate transportation, nor is the public cognizant of the extreme importance and value of the results obtained. Through the medium of correspondence, is secured the settlement of many matters extremely vexatious to shippers. The questions thus amicably adjusted are not, however, alone questions affecting the interest of individuals; on the contrary, the effect of the action taken by carriers in the adjustment of these complaints is often of wide spread interest and advantage to large communities, if not indeed of vital importance to considerable sections of country. Controversies arising out of the relations between the carriers themselves are likewise in many instances, presented to the Commission for arbitration. The Commission is also called upon frequently by traffic officials of carriers to indicate what is considered to be the proper and lawful course to be pursued in respect to the application of rates or regulations affecting transportation. Thus it will be seen that many great benefits result from the adjustment or settlement through

* See note 1, *supra*.

correspondence of questions informally submitted for investigation.⁵

An important service is thus performed by the Commission to shippers throughout the country in the settlement of meritorious claims, involving comparatively small sums, where the claimants would not feel justified in devoting the time and incurring the expense incident to a formal hearing.⁶

The Commission in its last report to Congress stated:⁷ "This docket has grown from No. 1, on January 1, 1907 (the date on which the Commission's first reparation order was issued), to No. 8755, on December 1, 1909.

"It might be well to state that while cases coming forward on this docket are adjusted in an informal manner, this special docket is not an informal docket except in respect to the form of pleadings and the character of the hearing. The Commission cannot on the special docket exceed the authority exercised by it on the formal docket, nor may it omit any requirement with respect to cases on the special docket that the law imposes on it in the disposition of cases on the formal docket. In all cases, whether on the formal or the informal docket, the law requires a complaint and answer and a full hearing, and provides that where damages are awarded the report of the Commission shall include the findings of fact on which the award is made. The Commission has endeavored to simplify the procedure on the special docket by accepting the application of the carrier as the equivalent of a complaint and answer, and by accepting as a sufficient compliance with the requirements of Section 15 for a full hearing its admission that the rate charged under the circumstances then existing was unreasonable.

"It will therefore be observed that the Commission's action in special reparation cases springs from the same authority which it exercises in formal cases."

⁵ Annual Reports of I. C. C. (21st, 1907; 22d, 1908).

⁶ Twenty-Second Annual Report of I. C. C. (1908).

⁷ Twenty-Third Annual Report of I. C. C. (1909).

§ 783. Sessions of the Commission {General.
Special.

¶ A. GENERAL SESSIONS.

The general sessions of the Commission for the hearing of complaints and for investigations of a general character relating to the business of common carriers and the manner and method in which the same is conducted, are usually held, pursuant to the Act, at the City of Washington, D. C.⁸

This has been found more conducive to the convenience of attendance from different parts of the country.⁹

The hearings of contested cases, including oral arguments are held at its officers in the American National Bank Building, No. 1317 F Street, N. W., and the two weeks beginning with the first Monday in each month are set aside for that purpose.¹⁰

¶ B. SPECIAL SESSIONS.

The Act provides, that whenever the convenience of the public or the parties, may be promoted, or delay or expense prevented thereby, the Commission may hold sessions in any part of the United States. Or it may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of the Act.¹¹

In pursuance of the above authority the Commission holds, special sessions, and investigations are made at various places in different parts of the country whenever the subject of investigation is local, or convenience of parties and witnesses will be subserved or the Commission be likely to be better informed as to the peculiar facts of the case. In selecting points for investigations of this character the Commission is governed largely by the convenience of parties and witnesses but, as is often the case, witnesses and parties on one side

⁸ Act to Regulate Commerce. Section 19.

⁹ Third Annual Report of I. C. C. (1889).

¹⁰ Rule 1, Rules of Practice before the I. C. C.

¹¹ See note 8, supra.

or the other are required to travel considerable distances as it is rarely possible to locate hearings so that both sides to a controversy will be equally accommodated.¹²

§ 784. Commission may prescribe Form of Procedure.

The statute provides that the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.¹³

The Act further provides that the Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulations of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be to those in use in the Courts of the United States.¹⁴

In the exercise of this authority, the Commission has formulated and adopted a set of rules to govern the practice before it, as set forth in *Section 806, post*.

The statute provides however, that every vote and official act of the Commission shall be entered of record, and that its proceedings shall be public upon the request of either party interested.¹⁵

§ 785. Seal of the Commission.

The Commission is authorized by the Act to have an official seal and the Act further provides that this seal shall be judicially noticed.¹⁶

§ 786. Commissioners may administer Oaths and Affirmations.

Either of the members of the Commission is given authority by the Act to administer oaths or affirmations.¹⁷

¹² See note 9, *supra*.

¹³ Act to Regulate Commerce. Section 17.

¹⁴ *Ibid*.

¹⁵ *Ibid*.

¹⁶ *Ibid*.

¹⁷ *Ibid*.

§ 787. Commissioners may sign Subpoenas.

Either of the members of the Commission is given authority by the Act to sign subpoenas.

§ 788. Number of Commissioners constituting a Quorum.

A majority of the Commission constitutes a quorum for the transaction of business, but no Commissioner is permitted to participate in any hearing or proceeding in which he has a pecuniary interest.¹⁸

§ 789. Persons Claiming to be Damaged may elect whether to Complain to the Commission or Bring Suit in a United States Court.

The Act provides, that any person or persons claiming to be damaged by any common carrier subject to its provisions may either make complaint to the Commission or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of the Act, in any District or Circuit Court of the United States of competent jurisdiction, but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure therein provided for he or they will adopt.¹⁹

§ 790. Complaints to the Commission.**¶ A. HOW AND BY WHOM MADE.**

The statute provides that any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society, or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of the Act to Regulate Commerce in contravention of the provisions thereof, may apply

¹⁸ Act to Regulate Commerce. Section 17.

¹⁹ Act to Regulate Commerce. Section 9.

to said Commission by petition, which shall briefly state the facts.²⁰

¶ B. HOW COMPLAINT SERVED UPON CARRIERS.

The statute provides that upon filing complaint with the Commission a statement of the complaint thus made shall be forwarded by the Commission to the common carrier complained of, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission.²¹

¶ C. REPARATION BY CARRIERS BEFORE INVESTIGATION.

The Act provides, that if the common carrier complained of shall, within the time specified by the Commission, make reparation for the injury alleged to have been done, the carrier shall be relieved of liability to the complainant only for the particular violation of the law thus complained of.²²

¶ D. INVESTIGATION OF COMPLAINTS BY COMMISSION.

The Act makes it the duty of the Commission upon failure of a carrier to satisfy a complaint within the time specified in the order of the Commission, or if there shall appear to be any reasonable ground for investigating such complaint, to investigate the matters complained of in such manner and by such means as it shall deem proper.²³

¶ E. COMPLAINTS FORWARDED BY STATE RAILROAD COMMISSIONS.

The Act provides that the Commission shall, in like manner and with the same authority and power, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission.²⁴

²⁰ Act to Regulate Commerce. Section 13 (as amended June 18, 1910).

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

¶ F. COMMISSION MUST MAKE REPORT OF INVESTIGATION.

The Act provides that whenever an investigation shall be made by the Commission it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include findings of fact upon which the award is made.²⁵

¶ G. REPORTS OF INVESTIGATIONS MUST BE ENTERED OF RECORD.

All reports of investigations made by the Commission must be entered of record.²⁶

¶ H. SERVICE OF COPIES OF REPORTS ON PARTIES.

A copy of the report of investigation made by the Commission must be furnished to the party who may have complained and to any common carrier that may have been complained of.²⁷

¶ I. COMPLAINANT NEED NOT BE DIRECTLY DAMAGED.

The Act provides, that no complaint shall at any time be dismissed because of the absence of direct damage to the complainant.²⁸

§ 791. Power of Commission to restrain Enforcement of New Rate, Fare, Charge, or Classification, or Regulation or Practice affecting Same pending Investigation.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) reads as follows: "Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once,

²⁵ Act to Regulate Commerce. Section 14.

²⁶ Act to Regulate Commerce. Section 19.

²⁷ See note 25, *supra*.

²⁸ See note 20, *supra*.

and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months."

§ 792. Preference to be given to Hearings involving Reasonableness of Rates.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that at any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of that amendment, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and that the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.^{28a}

^{28a} Act to Regulate Commerce. Section 15 (*as amended June 18, 1910*).

§ 793. Appearance of Parties.

The statute provides, that any party may appear before the Commission and be heard, in person or by attorney.²⁹

§ 794. Persons interested in Matters involved in Cases before Commission may be made Parties.

The statute provides, that in any proceeding for the enforcement of the provision of the statutes, relating to interstate commerce instituted before the Interstate Commerce Commission, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and that inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.³⁰

§ 795. Attendance and Testimony of Witnesses and Production of Documentary Evidence.

¶ A. POWER OF COMMISSION TO REQUIRE.

The statute provides, that the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, agreements, and documents relating to any matter under investigation.³¹

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing.³²

¶ B. COMMISSION MAY INVOKE AID OF COURT.

The Act provides, that in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any Court of the

²⁹ See note 13, *supra*.

³⁰ Section 2. Elkins Act.

³¹ Act to Regulate Commerce. Section 12.

³² *Ibid*.

United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents as authorized.³³

¶ C. PENALTY FOR DISOBEDIENCE TO ORDER OF THE COURT.

The statute provides, that any of the Circuit Courts of the United States within the jurisdiction of which any inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of the Act, or other person, issue an order requiring such common carrier or other person to appear before the Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and that any failure to obey such order of the Court may be punished by such Court as a contempt thereof.³⁴

¶ D. TESTIMONY MAY BE TAKEN BY DEPOSITION.

The testimony of any witness may be taken at the instance of a party in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer.³⁵

¶ E. COMMISSION MAY ORDER TESTIMONY TO BE TAKEN BY DEPOSITION.

The Commission may order testimony to be taken by deposition in a proceeding or investigation pending before it, at any stage of such proceeding or investigation.³⁶

¶ F. BEFORE WHOM DEPOSITION MAY BE TAKEN.

Deposition may be taken before any Judge of any Court of the United States or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not

³³ Act to Regulate Commerce. Section 12.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

being of counsel or attorney to either of the parties, or interested in the event of the proceeding or investigation.³⁷

¶ G. REASONABLE NOTICE MUST BE GIVEN.

Reasonable notice must first be given in writing by the party, or his attorney, proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of taking his deposition.³⁸

¶ H. COMPULSORY TESTIMONY BY DEPOSITION.

The statute provides, that any person may be compelled to appear and depose, and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission.³⁹ See *Paragraph B, supra*.

¶ I. MANNER OF TAKING DEPOSITIONS.

The Act provides, that every person deposing as provided above shall be cautioned and sworn (*or affirm, if he so request*) to testify the whole truth and be carefully examined.⁴⁰

His testimony must be reduced to writing by the magistrate taking the deposition, or under his direction, and after it has been reduced to writing, be subscribed by the deponent.⁴¹

¶ J. WHEN WITNESS IS IN A FOREIGN COUNTRY.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission.⁴²

³⁷ Act to Regulate Commerce. Section 12.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

¶ K. DEPOSITION MUST BE FILED WITH COMMISSION.

The statute requires that all depositions be promptly filed with the Commission.⁴³

¶ L. FEES OF WITNESSES AND MAGISTRATES.

The Act provides, that witnesses whose depositions are taken pursuant thereof, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the Courts of the United States.⁴⁴

Witnesses summoned before the Commission are entitled by the statute to be paid the same fees and mileage that are paid witnesses in the Courts of the United States.⁴⁵

¶ M. CLAIM THAT TESTIMONY OR EVIDENCE WILL TEND TO CRIMINATE WILL NOT EXCUSE WITNESS.

The statute provides, that no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the Act to Regulate Commerce or of any amendments thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture.⁴⁶

¶ N. IMMUNITY TO TESTIFYING WITNESSES.

The statute provides, that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he

⁴³ Act to Regulate Commerce. Section 12.

⁴⁴ Ibid.

⁴⁵ Act to Regulate Commerce. Section 18.

⁴⁶ Immunity of Witnesses Act; Feb. 11, 1893 [27 Stat. at L. 443], amended June 30, 1906 [June 30, 1906]; see also Section 12, Act to Regulate Commerce.

may testify or produce evidence, documentary or otherwise, before the Commission, or in obedience to its subpoena nor the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.⁴⁷

The immunity granted above extends only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.⁴⁸

¶ O. PENALTY FOR NEGLECT OR REFUSAL TO ATTEND AND TESTIFY.

See *Section 773, ante*.

§ 796. Rehearing.

¶ A. COMMISSION MAY GRANT REHEARING.

The Act provides, that after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for a rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor is made to appear.⁴⁹

The Act further provides, that applications for rehearing shall be governed by such general rules as the Commission may establish.⁵⁰

¶ B. APPLICATION FOR REHEARING SHALL NOT OPERATE AS STAY OF PROCEEDINGS, UNLESS SO ORDERED BY COMMISSION.

The statute provides, that no application for rehearing shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or

⁴⁷ Immunity of Witnesses Act.

⁴⁸ Amendment of June 30, 1906, to Immunity of Witnesses Act, *supra*.

⁴⁹ Act to Regulate Commerce. Section 16-A.

⁵⁰ *Ibid*.

operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission.⁵¹

The statute further provides, that in case a rehearing is granted the proceeding thereupon shall conform as near as may be to the proceedings in an original hearing, except as the Commission may otherwise direct.⁵²

¶ C. THE COMMISSION MAY ON REHEARING, REVERSE, CHANGE OR MODIFY ORDER.

The statute provides, that if, in its judgment, after rehearing and consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly.⁵³

Any decision, order, or requirement made after rehearing, reversing, changing, or modifying the original determination is subject to the same provisions as an original order.⁵⁴

§ 797. Orders of Commission.

¶ A. WHEN EFFECTIVE.

The Act provides, that all orders of the Commission except orders for the payment of money shall take effect within such reasonable time, not less than thirty days.⁵⁵

¶ B. ORDERS SHALL CONTINUE IN FORCE NOT EXCEEDING TWO YEARS.

The Act provides that all orders of the Commission shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a Court of competent jurisdiction.⁵⁶

⁵¹ Act to Regulate Commerce. Section 16-A.

⁵² Act to Regulate Commerce. Section 16-A.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Act to Regulate Commerce. Section 15.

⁵⁶ Ibid.

Under the above provision an order relating to rates is not invalid because it fails to prescribe the time it shall remain in force, but in such case the order remains in force for two years, the maximum time prescribed by the statute.⁵⁷

¶ C. SERVICE OF ORDER OF COMMISSION BY MAILING.

The statute provides that every order of the Commission shall be forthwith served upon the designated agent of the carrier in the City of Washington or in such other manner as may be provided by law.⁵⁸

¶ D. COMMISSION MAY SUSPEND OR MODIFY ORDER.

The statute authorizes the Commission to suspend or modify its orders upon such notice and in such manner as it shall deem proper.⁵⁹

¶ E. CARRIERS MUST COMPLY WITH ORDER OF COMMISSION.

The Act makes it the duty of every common carrier, its agents and employees to observe and comply with the orders of the Commission so long as they shall remain in effect.⁶⁰

¶ F. PUNISHMENT BY FORFEITURE FOR FAILURE TO OBEY ORDER OF COMMISSION.

See *Section 776, ante*.

§ 798. Limitation of Actions before the Commission.

¶ A. CLAIMS MUST BE FILED WITHIN TWO YEARS.

All complaints for the recovery of damages must be filed with the Commission within two years from the time the cause of action accrues.⁶¹

Claims filed with the Commission since August 28, 1907, must have accrued within two years prior to the date when

⁵⁷ N. Y. C. & H. R. R. R. Co. v. I. C. C. (1909), 168 Fed. Rep. 131.

⁵⁸ Act to Regulate Commerce. Section 16 (as amended June 18, 1910).

⁵⁹ *Ibid*.

⁶⁰ *Ibid*.

⁶¹ *Ibid*.

they are filed, otherwise they are barred by the statute.⁶² Claims filed on or before August 28, 1907, are not affected by the two years limitation in the Act.⁶³

¶ B. ACCRUED CLAIMS AT PASSAGE OF ACT.

The Hepburn Amendment of June 29, 1906, provided that claims which accrued prior to the passage of that Act must be presented within one year.⁶⁴ However, this paragraph was eliminated from the statute by the Act of June 18, 1910.

§ 799. Docket of the Commission.

¶ A. FORMAL COMPLAINTS.

The Commission maintains a docket of the formal complaints heard by it which is similar to that kept by Courts of law except that there are no entries of costs. This contains a record of the style of the case, the names of complainant and defendant, the date of filing the complaint or petition, and all subsequent pleadings such as the answer, reply, demurrer, amendments, etc., hearings, arguments, transcripts of testimony, exhibits, stenographic notes if any, briefs, subpoenas issued, the report or finding of the Commission, the order or award, and all other minutes of proceedings.

This docket also contains a full record of the investigations of the Commission which have been instituted of its own motion and *ex parte* applications. Such cases are styled "In Re" or "In the Matter of." The cases are entered serially, complaints filed up to the amendment of June 29, 1906, being

⁶² Rule 10, Con. Rul. Bul. No. 4 (Dec. 2, 1907). See *Ocheltree Grain Co. v. T. & P. Ry. Co.* (1910), 18 I. C. C. R. 412.

⁶³ Rule 10, Con. Rul. Bul. No. 4 (Dec. 2, 1907).

⁶⁴ Act to Regulate Commerce, Section 16. The Interstate Commerce Act as amended June 29, 1906, was approved by the President on that date. By joint resolution of Congress approved on June 30, 1906, it was provided that the Act should not take effect until 60 days after its approval by the President. *Held*, That the Act became effective on June 29, 1906, and that the resolution was therefore powerless to postpone the operation of the statute. (*U. S. v. Standard Oil Co.*, 148 Fed. Rep. 719.)

number 879 and less; those cases filed subsequent to such amendment being higher than that number.

On July 2, 1909, the Commission adopted a rule providing for the consolidation under one docket number of all cases involving substantially the same subject matter.⁶⁵

¶ B. INFORMAL COMPLAINTS.

The docket of informal complaints contains all of the steps taken in the proceeding, including the adjustment effected or whatever disposition was made of the matter. This also contains a record of all correspondence had on the subject. Like the formal complaint docket the complaints are entered numerically. The first number under the amendment of June 29, 1906, was 3727.

§ 800. Commission may upon its Own Initiative enter upon Hearing concerning Propriety of New Rate, Fare, Charge, Classification, or Regulation.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that, whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice.^{65a}

§ 801. Power of Commission to inquire into Business of Carriers and keep itself Informed in Regard thereto.

The statute provides, that the Commission shall have authority to inquire into the management of the business of all common carriers subject to the provisions thereof, and shall

⁶⁵ See note 7, *supra*.

^{65a} Act, Section 15 (*as amended June 18, 1910*).

keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.⁶⁶

§ 802. Commission required to execute and enforce the Provisions of the Act to Regulate Commerce.

The Act authorizes and requires the Commission to execute and enforce the provisions of the Act, and provides, that "upon request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission shall apply to institute in the proper Court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of the Act and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States."⁶⁷

§ 803. Institution of Inquiries by the Commission of its own Motion.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of the Act, or concerning which any question may arise under any provision of the Act, or relating to the enforcement of any of the provisions of the Act.⁶⁸

It further provides that the Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of the Act, in-

⁶⁶ See note 31, *supra*.

⁶⁷ *Ibid*.

⁶⁸ See note 20, *supra*.

cluding the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money.^{68a}

It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of the Act.⁶⁹

§ 804. Commission as a Board of Arbitration.

In its Annual Report to Congress for the year 1904,⁷⁰ the Commission stated: "In two instances⁷¹ during the past year the Commission has been asked by both shippers and carriers to adjudicate controversies between them concerning the adjustment of rates. In each case the questions involved were of manifest importance as affecting the business of competitive communities and the traffic of railway lines by which they were served. These questions had been the subject of prolonged contention between the parties and of unavailing efforts to harmonize by direct negotiation the conflicting interests of carriers and communities whose officers and representatives finally joined in invoking the friendly offices of the Commission.

"While the Commission is not in express terms authorized to act as a board of arbitration in matters referred to it by consent of the parties concerned, the subject of controversy and the issues involved in both these requests presented such a state of facts as would have justified a proceeding upon formal complaint or of inquiry upon our own motion, and were thus clearly within the spirit of the statute which defines

^{68a} See note 20, supra.

⁶⁹ See note 26, supra.

⁷⁰ Eighteenth Annual Report of I. C. C. (1904), page 23.

⁷¹ See proceedings entitled "In the Matter of Differential Freight Rates to and from North Atlantic Ports" (decided April 27, 1905), 11 I. C. C. R. 13, and "In the Matter of Freight Rates between Memphis and points in Arkansas" (decided August 15, 1905), 11 I. C. C. R. 180.

the functions of the Commission. Believing this view to be correct as it has proven to be unquestioned, the Commission accepted the responsibilities which it was thus asked to assume. The proceedings in form are strictly in accordance with the provisions of the Act although the voluntary submission by the adverse parties gives them in fact the nature of an arbitration."

§ 805. Effect of Amendment of June 18, 1910, upon Powers of Commission over pending Cases.

The amendment of June 18, 1910, provides that nothing contained therein shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the Acts of said commission; and in any cases, proceedings, or matters now pending before it, the commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated; and nothing in this Act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation, or association.^{71a}

§ 806. Rules of Practice before the Commission in Cases and Proceedings under the Act to Regulate Commerce.

RULE I.

PUBLIC SESSIONS.

The general sessions of the Commission for hearing contested cases, including oral argument, will be held at its office in the American Bank Building, No. 1317 F. Street, N. W., Washington, D. C., and the two weeks beginning with the first Monday in each month are set aside for that purpose.

Special sessions may be held at other places as ordered by the Commission.

RULE II.

PARTIES TO CASES.

Any person, firm, company, corporation, or association, mer-

^{71a} Section 15, Mann-Elkins Bill, approved June 18, 1910.

cantile, agricultural, or manufacturing society, or other organization, body politic or municipal organization, or any common carrier, or the railroad commissioner or commission of any State or Territory, may complain to the Commission by petition, of anything done, or omitted to be done, in violation of the provisions of the Act to Regulate Commerce by any common carrier or carriers or other parties subject to the provisions of said Act. Where a complaint relates to the rates, regulations, or practice of a single carrier, no other carrier need be made a party, but if it relates to matters in which two or more carriers, engaged in transportation by continuous carriage or shipment, are interested, the several carriers participating in such carriage or shipment are proper parties defendant.

Where a complaint relates to rates, regulations, or practices of carriers operating different lines, and the object of the proceeding is to secure correction of such rates, regulations or practices on each of said lines, all the carriers operating such lines must be made defendants.

When the line of a carrier is operated by a receiver or trustee, both the carrier and its receiver or trustee should be made defendants in cases involving transportation over such line.

Persons or carriers not parties may petition in any proceeding for leave to intervene and be heard therein. Such petition shall set forth the petitioner's interest in the proceeding. Leave granted on such application shall entitle the intervenor to appear and be treated as a party to the proceeding, but no person not a carrier who intervenes in behalf of the defense shall have the right to file an answer or otherwise become a party, except to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard, in person or by counsel, on the argument of the case.

RULE III.

COMPLAINTS.

Complaints must be by petition setting forth briefly the

facts claimed to constitute a violation of the law. The name of the carrier or carriers complained against must be stated in full, and the address of the petitioner, with the name and address of his attorney or counsel, if any, must appear upon the petition. The petition need not be verified. The complainant must furnish as many copies of the petition as there may be parties complained against to be served and three additional copies for the use of the Commission.

The Commission will cause a copy of the petition, with notice to satisfy or answer the same within a specified time, to be served personally or by mail, in its discretion, upon each defendant.

Complaints which involve the same or substantially the same principle, subject, or state of facts, even though two or more rates or regulations are alleged to be unreasonable or discriminatory and numerous shipments are affected thereby, should be included in one complaint, in which the several rates, regulations, discriminations, and shipments are set out in items, exhibits, or paragraphs. Two or more complainants may join in one complaint against one or more carriers, and one complainant's complaints against two or more carriers may be included in one complaint, when the subject of complaint, the principle involved, or the state of facts is substantially the same. In other words, two or more complaints should not be filed when one complaint can be made fairly to cover the subject, the principle, or the facts.⁷²

If one complainant or two or more complainants file separate complaints which rest upon the same principle or upon the same or a substantially similar state of facts, the Commission will, in its discretion, consolidate the several complaints into one case, under one number and title, so that the same may be disposed of in one hearing and in one report.⁷³

Reparation will not ordinarily be awarded in a formal case attacking a rate as unreasonable or otherwise in violation of law unless the intent to claim reparation is specifically dis-

⁷² Rule 206, Con. Rul. Bul. No. 4 (July 2, 1909).

⁷³ Ibid.

closed therein, or in an amendment thereto, filed before the submission of said case. The Commission may, however, in the exercise of its discretion, upon good cause shown, and under unusual circumstances, deal specially with a particular claim for reparation.⁷⁴

Claim for reparation based upon a decision of the Commission filed by complainants not parties to the case in which such decision was rendered will not ordinarily be allowed unless reparation was claimed in the complaint upon which such decision of the Commission was based, or was awarded by the Commission. The Commission may, however, in the exercise of its discretion, upon good cause shown, and under unusual circumstances, specially consider a particular claim for reparation of this class.⁷⁵

Complaints for reparation must disclose as nearly as possible all the claims of complainant or complainants covered by or involved in the complaint, except that when a general rate adjustment or a rate under which many shipments have been made to many destinations, or from many points of origin by many shippers, is involved, complaint may contain specific prayer for reparation on all shipments, and the proving up as to shipments and amounts of reparation due thereon be left until the question of the reasonableness of the rate or rates and whether or not reparation should be awarded, have been decided. And each claimant for reparation under a decision that has been rendered must include all his shipments and claims in one complaint or statement.⁷⁶

RULE IV.

ANSWERS.

A defendant must answer within twenty days from the date of the notice above provided for, but the Commission may, in a particular case, require the answer to be filed within a shorter time. The time prescribed in any case may be

⁷⁴ Rule 206, Con. Rul. Bul. No. 4 (July 2, 1909).

⁷⁵ Ibid.

⁷⁶ Rule 206, Con. Rul. Bul. No. 4 (July 2, 1909).

extended, upon good cause shown by the Commission. The original answer must be filed with the secretary of the Commission at its office in Washington and a copy thereof at the same time served by the defendant personally or by mail upon the complainant who must forthwith notify the secretary of its receipt. The answer must specifically admit or deny the material allegations of the petition and also set forth the facts which will be relied upon to support any such denial. If a defendant shall make satisfaction before answering, a written acknowledgment thereof, showing the character and extent of the satisfaction given, must be filed by the complainant, and in that case the fact and manner of satisfaction, without other matter, may be set forth in the answer. If satisfaction be made after the filing and service of an answer, such written acknowledgment must also be filed by the complainant, and a supplemental answer setting forth the fact and manner of satisfaction must be filed by the defendant.

RULE V.

NOTICE IN NATURE OF DEMURRER.

A defendant who deems the petition insufficient to show a breach of legal duty may, instead of answering or formally demurring, serve on the complainant notice of hearing on the petition; and in such case the facts stated in the petition will be deemed admitted. A copy of the notice must at the same time be filed with the secretary of the Commission. The filing of an answer, however, will not be deemed an admission of the sufficiency of the petition, but a motion to dismiss for insufficiency may be made at the hearing.

RULE VI.

SERVICE OF PAPERS.

Copies of notices or other papers must be served upon the adverse party or parties, personally or by mail, and when any party has appeared by attorney service upon such attorney shall be deemed proper service upon the party.

RULE VII.

AMENDMENTS.

Upon application of any party, amendments to any petition or answer, in any proceeding or investigation, may be allowed by the Commission, in its discretion.

RULE VIII.

ADJOURNMENTS AND EXTENSIONS OF TIME.

Adjournments and extensions of time may be granted upon the application of any party, in the discretion of the Commission.

RULE IX.

STIPULATIONS.

The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the secretary, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be regarded and used as evidence on the hearing. It is desired that the facts be thus agreed upon whenever practicable.

RULE X.

HEARINGS.

Upon issue being joined by the service of an answer or notice of hearing on the petition the Commission will assign a time and place for hearing the case, which will be at its office in Washington, unless otherwise ordered. Witnesses will be examined orally before the Commission, unless their testimony be taken or the facts be agreed upon as provided for in these rules. The complainant must in all cases establish the facts alleged to constitute a violation of the law, unless the defendant admits the same or fails to answer the petition. The defendant must also prove facts alleged in the answer, unless admitted by the petitioner and fully disclose its defense at the hearing.

In case of failure to answer, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require.

Cases may be heard by one or more members of the Commission, or by a special agent or examiner, as ordered by the Commission. When testimony is directed to be taken by a special agent or examiner, such officer shall have power to administer oaths, examine witnesses, and receive evidence, and shall make report thereof to the Commission.

All cases shall be orally argued in Washington, D. C., or submitted upon briefs, unless otherwise ordered by the Commission.

RULE XI.

DEPOSITIONS.

The testimony of any witness may be taken by deposition, at the instance of a party, in any case before the Commission, and at any time after the same is at issue. The Commission may also order testimony to be taken by deposition, in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any authorized special agent or examiner of the Commission, judge of any court of the United States, or any commissioner of a circuit or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties or otherwise interested in the proceeding or investigation. Reasonable notice must be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition, and a copy of such notice shall be filed with the secretary of the Commission.

When testimony is to be taken on behalf of a common carrier in any proceeding instituted by the Commission on its own motion, reasonable notice thereof in writing must be given by such carrier to the secretary of the Commission.

Every person whose deposition is taken shall be cautioned

and sworn (*or may affirm, if he so request*) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing, which may be typewriting, by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the witness.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the secretary. All depositions must be promptly filed with the secretary.

RULE XII.

WITNESSES AND SUBPOENAS.

Subpoenas requiring the attendance of witnesses from any place in the United States to any designated place of hearing, for the purpose of taking the testimony of such witnesses orally before one or more members of the Commission, or an authorized special agent or examiner of the Commission, or by deposition, will, upon the application of either party or upon the order of the Commission directing the taking of such testimony, be issued by any member of the Commission.

Subpoenas for the production of books, papers, or documents (*unless directed to issue by the Commission upon its own motion*) will only be issued upon application in writing; and when it is sought to compel witnesses, not parties to the proceeding, to produce such documentary evidence, the application must be sworn to and must specify, as nearly as may be, the books, papers, or documents desired; that the same are in the possession of the witness or under his control; and also, by facts stated, show that they contain material evidence necessary to the applicant. Applications to compel a party to the proceeding to produce books, papers, or documents need only set forth in a general way the books, papers, or documents desired to be produced, and that the applicant believes they will be of service in the determination of the case.

Witnesses whose testimony is taken orally or by deposition,

and the magistrate or other officer taking such deposition, are severally entitled to the same fees as are paid for like services in the courts of the United States, such fees to be paid by the party at whose instance the testimony is taken.⁷⁷

RULE XIII.

DOCUMENTARY EVIDENCE.

Where relevant and material matter offered in evidence is embraced in a report, tariff, rate sheet, classification, book, pamphlet, written or printed statement, or document of any kind containing other matter not material or relevant and not intended to be put in evidence, such report, etc., in whole, shall not be received or allowed to be filed in a cause on hearing before this Commission or at any time during the pendency thereof, but counsel or other party offering the same shall also present in convenient and proper form for filing a copy of such material and relevant matter, and that only shall be received and allowed to be filed as evidence and made part of the record in such cause; provided, however, that, if practicable, such matter may be read and taken down by the reporter and thus made part of the record.

RULE XIV.

BRIEFS. ⁷⁸

Unless otherwise specially ordered, printed briefs shall be filed on behalf of the parties in each case. The brief for complainant and the brief or briefs for the defendants, or intervenors, shall contain an abstract of the evidence relied upon by the parties filing the same, and in such abstract reference shall be made to the pages of the record wherein the evidence appears. The abstract of evidence should follow the statement of the case and precede the argument.

⁷⁷ Fees of witnesses are fixed by law at \$1.50 for each day's attendance at the place of hearing or of taking deposition, and 5 cents per mile for going to said place from his place of residence and 5 cents per mile for returning therefrom.

⁷⁸ As amended by Rule 149, Conference Ruling Bulletin No. 4 (February 9, 1909).

Briefs shall be printed in 12-point type on antique-finished paper, $5\frac{7}{8}$ inches wide by 9 inches long, with suitable margins, double-leaded text and single-leaded citations.

At the close of the taking of testimony in each case the Commissioner or examiner before whom such testimony is taken shall fix the specific dates on or before which the briefs of the respective parties must be filed with the Commission and served on the adverse parties. The dates so fixed, unless otherwise ordered at said time, shall allow to the respective parties the following periods of time within which to file with the Commission and serve their respective briefs on the adverse parties, to wit: To the complainant, thirty days from the date of the conclusion of the testimony; to the defendants and interveners, fifteen days after the specific date fixed for the complainant; and to complainant for reply brief, ten days after the date fixed for defendant or interveners. If the briefs of the respective parties are not filed and served on the date fixed for each, the case will stand submitted without briefs on the date that defendants' or interveners' briefs are due. Briefs of parties not filed as aforesaid, and served on the respective parties on or before the specific dates fixed therefor, will not be received or considered by the Commission.

All briefs shall be filed with the secretary and shall be accompanied by notice showing service upon the adverse parties, and 15 copies of each brief shall be filed for the use of the Commission.

The parties will be required to comply strictly with this rule, and, except for good cause shown, no extension of time will be allowed. Application for extension of time in which to file brief shall be by petition in writing, stating the facts on which the application rests, which must be filed with the Commission at least five days before the time for filing such briefs has expired.

Application for oral argument may be made by any party at the close of the taking of the testimony or at any time of the filing of his brief. Such application can be granted only by the Commission.

RULE XV.

REHEARINGS.

Applications for reopening a case after final submission, or for rehearing after decision made by the Commission, must be by petition, and must state specifically the grounds upon which the application is based. If such application be to reopen the case for further evidence the nature and purpose of such evidence must be briefly stated and the same must not be merely cumulative. If the application be for a rehearing, the petition must specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the grounds of error; and when any decision, order, or requirement of the Commission is sought to be reversed, changed, or modified on account of facts and circumstances arising subsequent to the hearing, or of consequences resulting from compliance with such decision, order, or requirement which are claimed to justify a reconsideration of the case, the matters relied upon by the applicant must be fully set forth.

RULE XVI.

PRINTING OF PLEADINGS, ETC.

Pleadings, depositions, and other papers of importance shall be printed or in typewriting, and when not printed only one side of the paper shall be used.

RULE XVII.

COPIES OF PAPERS OR TESTIMONY.

Copies of any report, decision, order, or requirement of the Commission will be furnished without charge upon application to the secretary by any person or carrier party to the proceeding.

One copy of the testimony will be furnished by the Commission for the use of the complainant and one copy for the use of the defendant, without charge; and when two or more complainants or defendants have appeared at the hearing, such complainants or defendants must designate to whom the copy for their use shall be delivered.

RULE XVIII.

COMPLIANCE WITH ORDERS.

Upon the issuance of an order against any defendant or defendants, after hearing, investigation, and report by the Commission, such defendant or defendants must promptly notify the secretary of the Commission, upon the date when such order becomes effective, as to whether such defendant or defendants has complied or not with the provisions of said order; and when a change in rates is required, such notice must be given in addition to the filing of a schedule or tariff showing such change in rates.

RULE XIX.

APPLICATION BY CARRIERS UNDER PROVISIO CLAUSE OF FOURTH SECTION.

Any common carrier may apply to the Commission, under the proviso clause of the fourth section, for authority to charge for the transportation of like kind of property less for a longer than for a shorter distance over the same line, in the same direction, the shorter being included within the longer distance. Such application shall be by petition, which shall specify the places and traffic involved, the rates charged on such traffic for the shorter and longer distances, the carriers other than the petitioner which may be interested in the traffic, the character of the hardship claimed to exist, and the extent of the relief sought by the petitioner. Upon the filing of such a petition, the Commission will take such action as the circumstances of the case seem to require.

RULE XX.

INFORMATION TO PARTIES.

The secretary of the Commission will, upon request, advise any party as to the form of petition, answer, or other paper necessary to be filed in any case, and furnish such information from the files of the Commission as will conduce to a proper presentation of facts material to the controversy.

RULE XXI.

ADDRESS OF THE COMMISSION.

All complaints concerning anything done or omitted to be

done by any common carrier, and all petitions or answers in any proceeding, or applications in relation thereto, and all letters and telegrams for the Commission, must be addressed to Washington, D. C., unless otherwise specially directed.

FORMS.

No. 1.—COMPLAINT AGAINST A SINGLE CARRIER.

No. 2.—COMPLAINT AGAINST TWO OR MORE CARRIERS.

No. 3.—ANSWER.

No. 4.—NOTICE BY CARRIER UNDER RULE V.

No. 5.—SUBPOENA.

No. 6.—NOTICE OF TAKING DEPOSITIONS UNDER RULE XII.

These forms may be used in cases to which they are applicable, with such alterations as the circumstances may render necessary.

No. 1.

COMPLAINT AGAINST A SINGLE CARRIER.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
The Railroad Company. }

The petition of the above-named complainant respectfully shows:

I. That [here let complainant state his occupation and place of business].

II. That the defendant above named is a common carrier engaged in the transportation of passengers and property by railroad between points in the State of and points in the State of, and as such common carrier is subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III. That [here state concisely the matters intended to be complained of. Continue numbering each succeeding paragraph as in Nos. I, II and III.]

Wherefore the petitioner prays that the defendant may be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendant to cease and desist from said violations of the Act to Regulate Commerce, and for such order and further order as the Commission may deem necessary in the premises. [The prayer may be varied so as to ask also for the ascertainment of lawful rates or practices and an order requiring the carrier to conform thereto. If reparation for any wrong or injury be desired, the petitioner should state the nature and extent of the reparation he deems proper.]

Dated at, ..., 19...

A. B.

[Complainant's signature.]

No. 2.

COMPLAINT AGAINST TWO OR MORE CARRIERS.

INTERSTATE COMMERCE COMMISSION.

A. B.
 against
 The Railroad Company,
 and
 The Railroad Company.

The petition of the above-named complainant respectfully shows:

I. [*That here let complainant state his occupation and place of business.*]

II. That the defendants above named are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment, wholly by railroad [*or partly by railroad and partly by water, as the case may be*], between points in the State of and points in the State of, and as such common carriers are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

[*Then proceed as in Form 1.*]

No. 3.

ANSWER.

INTERSTATE COMMERCE COMMISSION.

A. B.
 against
 The Railroad Company.

The above-named defendant, for answer to the complaint in this proceeding, respectfully states:

I. That [*here follow the usual admissions, denials and averments. Continue numbering each succeeding paragraph.*]

Wherefore the defendant prays that the complainant in this proceeding is dismissed.

The Railroad Company,
 By E. F.
 [*Title of officer.*]

No. 4.

NOTICE BY CARRIER UNDER RULE V.

INTERSTATE COMMERCE COMMISSION.

A. B.
 against
 The Railroad Company.

Notice is hereby given under Rule V of the Rules of Practice in proceedings given before the Commission that a hearing is desired in this proceeding upon the facts as stated in the complaint.

The Railroad Company,
 By E. F.
 [*Title of officer.*]

No. 5.

SUBPOENA.

To ,

.....
You are hereby required to appear before in the matter of a complaint of against, as a witness on the part of, on the day of, 19.., at o'clock ... m., at, and bring with you then and there

Dated
[Seal.]

.....,
Commissioner.

..... ,

..... ,

Attorney for

(Notice.—Witness fees for attendance under this subpoena are to be paid by the party at whose instance the witness is summoned, and every copy of this summons for the witness must contain a copy of this notice.)

No. 6.

NOTICE OF TAKING DEPOSITIONS UNDER RULE XII.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
The Railroad Company. }

You are hereby notified that G. H. will be examined before C. D., a [title of officer or magistrate], at; on the day of, 19.., at o'clock in the noon, as a witness for the above-named complainant [or defendant, as the case may be], according to Act of Congress in such case made and provided, and the Rules of Practice of the Interstate Commerce Commission, at which time and place you are notified to be present and take part in the examination of the said witness.

Dated , 19...

I. J.

[Signature of complainant or defendant, or of counsel.]

To A. B., the above-named complainant, [or The Railroad Company, the above-named defendant; or to K. L., counsel for the above-named complainant or defendant].

CHAPTER XLVIII.

APPENDICES.

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APPENDIX 1.

Act to Regulate Commerce as Originally Enacted.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory, as aforesaid.*

The term "railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Sec. 2. That if any common carrier subject to the provisions of this Act, shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the

provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carriers shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act.

Sec. 5. That it shall be unlawful for any common carrier

subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of any agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 6. That every common carrier subject to the provisions of this Act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this Act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep for public inspection, at every depot where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plain-

ly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reductions in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any service in connection therewith, than is specified in such published schedule of rates, fares, and charges as may, at the time, be in force.

Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall, from time to time, prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published; but no common

carrier, party to any such joint tariff, shall be liable for the failure of any other common carrier, party thereto, to observe and adhere to the rates, fares, or charges thus made and published.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any Circuit Court of the United States in the judicial district wherein the principal office of said common carrier is situated or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this Act; and failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such Circuit Court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act.

Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this Act, to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

Sec. 8. That in case any common carrier subject to the

provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the Court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Sec. 9. That any persons or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any District or Circuit Court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for, he or they will adopt. In any such action brought for the recovery of damages the Court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Sec. 10. That any common carrier subject to this provision of this Act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter or thing in this Act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this Act to be done, not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or

abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense.

Sec. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commission first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner peculiarly interested therein, shall enter upon the duties of or hold such office. Said Commissioner shall not engage in any other business, vocation or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers, subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this Act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents, relating to any matter under investigation, and to that end may invoke the aid of any Court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; under the provisions of this section.

And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other persons, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the Court may be punished by such Court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Sec. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, with the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of

fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigation made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Sec. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this Act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complainant, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this Act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this Act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the Circuit Court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case

may be; and the said Court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the Court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the Court shall direct; and said Court shall proceed to hear and determine the matter speedily as a Court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such Court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the Court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such Court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such Court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such Court to issue writs of attachment, or any other process of said Court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said Court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the Court shall direct, either to the party complaining, or into Court to abide the ultimate decision of the Court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment

or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such Court. When the subject in dispute shall be to the value of two thousand dollars or more, either party to such proceeding before said Court may appeal to the Supreme Court of the United States, under the same regulations now provided by the law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the Court or the execution of any writ or process thereon; and such Court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States. For the purpose of this Act, excepting its penal provisions, the Circuit Courts of the United States shall be deemed to be always in session.

Section 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the Courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations.

Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of judges of the Courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other

employees as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The Commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the Courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation in any other places than in the city of Washington, shall be allowed and paid, on the presentation of itemized vouchers therefor, approved by the chairman of the Commission and the Secretary of the Interior.

Sec. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act.

Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations con-

cerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Sec. 21. That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

Sec. 22. That nothing in this Act shall apply to the carriage, storage, or hauling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this Act.

Sec. 23. That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of this Act for the fiscal year ending June thirtieth, Anno Domini eighteen hundred and eighty-eight, and the intervening time anterior thereto.

Sec. 24. That the provisions of Sections 11 and 18 of this Act, relating to the appointment and organization of the Commission herein provided for, shall take effect immediately,

and the remaining provisions of this Act shall take effect sixty days after its passage.

(24 Statutes at Large, 379; I Supp. to Rev. Stat. U. S., 529, C. 104 approved February 4, 1887, and in effect April 5, 1887.)

APPENDIX 2.

Amendment of March 2, 1889.

Sec. 1. That Section 6 of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby, amended so as to read as follows:

"Sec. 6. That every common carrier subject to the provisions of this Act, shall print and keep open to public inspection, schedules showing the rates and fares and charges for the transportation of passengers and property which any common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

"Any common carrier subject to the provisions of this Act, receiving freight in the United States to be carried through a foreign country to any place in the United States, shall also, in like manner, print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States, through a foreign country into the United States, the through rate on which shall not have been made public as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if

said freight were of foreign production; and any law in conflict with this section is hereby repealed.

"No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

"And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation, for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

"Every common carrier subject to the provisions of this Act, shall file with the Commission hereinafter provided for, copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission, copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs or rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall, from time to time, prescribe the measure of publicity which

shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carrier to publish, and the places in which they shall be published.

"No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days' notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days' notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time, the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

"It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

"The Commission may determine and prescribe the form in which the schedules, required by this section to be kept open to public inspection, shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

"If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any Circuit Court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this Act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners,

as complainants, may also apply, in any such Circuit Court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act."

Sec. 2. That Section 10 of said Act is hereby amended so as to read as follows:

"Sec. 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done, not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the Court.

"Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to

obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any Court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the Court, for each offense.

“Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any Court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the Court.

“If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person, or such officer or agent of such corporation or company, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any Court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the Court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly

or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any Court of the United States of competent jurisdiction for all damages caused by or resulting therefrom."

Sec. 3. That Section 12 of said Act is hereby amended so as to read as follows:

"Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply, to institute in the proper Court and to prosecute, under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of this Act, and for the punishment of all violations thereof; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpoenas, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and in case of disobedience to a subpoena, the Commission, or any party to a proceeding before the Commission, may invoke the aid of any Court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

"And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the Court may be punished by such Court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not

excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding."

Sec. 4. That Section 14 of said Act is hereby amended so as to read as follows:

"Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed *prima facie* evidence as to each and every fact found.

"All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all Courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual report."

Sec. 5. That Section 16 of said Act is hereby amended so as to read as follows:

"Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this Act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this Act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the Circuit Court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said Court shall have power to hear and determine the matter, on such

short notice to the common carrier complained of, as the Court shall deem reasonable; and such notice may be served on such common carrier, his or her officers, agents, or servants, in such manner as the Court shall direct; and said Court shall proceed to hear and determine the matter speedily as a Court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such Court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the Court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such Court, on such hearing or on report of any such persons or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such Court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such Court to issue writs of attachment, or any other process of said Court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said Court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the Court shall direct, either to the party complaining or into Court, to abide the ultimate decision of the Court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of

execution, in like manner as if the same had been recovered by a final decree in personam in such Court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said Court, may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but the appeal shall not operate to stay or supersede the order of the Court or the execution of any writ or process thereon; and such Court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States.

“If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the Seventh Amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this Act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the Circuit Court of the United States sitting as a Court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said Court shall, by its order, then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial (of) the findings of fact of said Commission as set forth in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the Court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing,

then the Court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more, either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment in said Circuit Court. If the judgment of the Circuit Court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the Court, which shall be collected as part of the costs in the case. For the purposes of this Act, excepting its penal provisions, the Circuit Courts of the United States shall be deemed to be always in session."

Sec. 6. That Section 17 of said Act is hereby amended so as to read as follows:

"Sec. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the Courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas."

Sec. 7. That Section 18 of said Act is hereby amended so as to read as follows:

"Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the Judges of the Courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its

duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the Courts of the United States.

“All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor, approved by the chairman of the Commission.”

Sec. 8. That Section 21 of said Act is hereby amended so as to read as follows:

“Sec. 21. That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.”

Sec. 9. That Section 22 of said Act is hereby amended so as to read as follows:

“That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this Act shall be construed to prevent railroads from giving free carriage

to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this Act."

Sec. 10. That the Circuit and District Courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the Act to which this is a supplement and all Acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the Court, or otherwise, as the Court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this Act or the Act to which it is a supplement.

(25 Statutes at Large, 855; 1 Supp. to Rev. Stat. U. S., 684. C. 382.)

APPENDIX 3.

Amendment of February 10, 1891.

Sec. 1. That Section 12 of an Act entitled "An Act to Regulate Commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby, amended so as to read as follows:

"Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which

the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper Court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States; and for the purposes of this Act, the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

“Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena, the Commission, or any party to a proceeding before the Commission, may invoke the aid of any Court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

“And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey the subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the Court may be punished by such Court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

“The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commis-

sion may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or superior court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

"Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

"If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission."

Witnesses whose depositions are taken pursuant to this Act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like service in the courts of the United States.

(26 Statutes at Large, 743; 1 Supp. to Rev. Stat., U. S., 891. C. 128.)

APPENDIX 4.

Amendment of February 8, 1895.

Sec. 1. That Section 22 of an Act to regulate Commerce, approved February fourth, eighteen hundred and eighty-seven, and as amended March second, eighteen hundred and eighty-

nine, be, and is hereby, amended by adding thereto the following proviso:

“Provided further, That nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier subject to the provisions of this Act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission, copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by Section 6 of this Act; and all the provisions of said Section 6 relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said Section 6. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of Section 10 of this Act shall apply to any violation of the requirements of this proviso.”

(28 Statutes at Large, 643; 2 Supp. to Rev. Stat. U. S., 369. C. 61.)

APPENDIX 5.

Amendment of June 29, 1906, Hepburn Act.

Sec. 1. That Section 1 of an Act entitled “An Act to Regulate Commerce,” approved February fourth, eighteen hundred and eighty-seven, be amended so as to read as follows:

“Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and

partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States, to an adjacent foreign country, or from any place in the United States, through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

“The term ‘common carrier’ as used in this Act shall include express companies and sleeping car companies. The term ‘railroad,’ as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term ‘transportation’ shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor,

and to establish through rates and just and reasonable rates applicable thereto.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

"No common carrier subject to the provisions of this Act, shall, after January 1, 1907, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary caretakers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars, nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce

with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

"From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

"Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonable, practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in Section 13 of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor and the Commission may make an order, as provided in Section 15 of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

Sec. 2. That Section 6 of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 6. That every common carrier subject to the provisions of this Act, shall file with the Commission created by this Act and print and keep open to public inspection, schedules

showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

"Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner, print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates, established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

"No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to

the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. *Provided*, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

“The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

“Every common carrier subject to this Act shall also file with said Commission, copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

“The Commission may determine and prescribe the form in which the schedules, required by this section to be kept open to public inspection, shall be prepared and arranged and may change the form from time to time as shall be found expedient.

“No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor

extend to any shipper or person any privilege or facilities in the transportation of passengers or property, except such as are specified in such tariffs: *Provided*, That wherever the word 'carrier' occurs in this Act it shall be held to mean 'common carrier.'

"That in time of war or threatened war, preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic."

That Section 1 of the Act entitled "An Act to further regulate Commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, be amended so as to read as follows:

"That anything done or omitted to be done by a corporation common carrier, subject to the Act to Regulate Commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier, subject to said Acts, to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to Regulate Commerce and the Acts amendatory thereof whereby any such property, shall, by any device whatever, be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to Regulate Commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give,

or solicit, accept, or receive any such rebates, concessions, or discrimination, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of this Act, or the Act to Regulate Commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another, it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

“In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to Regulate Commerce or Acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

“Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or from whom as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common car-

rier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this Act, shall, in addition to any penalty provided by this Act, forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States, is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be."

Sec. 3. That Section 14 of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decisions, order or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

"All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports."

Sec. 4. That Section 15 of said Act be amended so as to read as follows:

("Sec. 15. That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in Section 13 of this Act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust and unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, (to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation,) to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than 30 days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

"The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be

necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

"If the owner of property transported under this Act, directly or indirectly renders any service connected with such transportation, or furnishes any instrumentalities used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

"The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act."

Sec. 5. That Section 16 of said Act as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

("Sec. 16. That if, after hearing on a complaint made as provided in Section 13 of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay the complainant the sum to which he is entitled on or before a day named)

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the Circuit Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner

shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the Circuit Court within one year from the date of the order, and not after: *Provided*, That claims accrued prior to the passage of this Act may be presented within one year.

"In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

"Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

"The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

"It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

"Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of Section 15 of this Act, shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

"The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recover-

able in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

"It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act, paying the expenses of such employment out of its own appropriation.

"If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the Circuit Court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

"From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

"The venue of suits brought in any of the Circuit Courts

of the United States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers, then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of 'An Act to expedite the hearing and determination of suits in equity, and so forth,' approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the Act to Regulate Commerce approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: *Provided*, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: *Provided further*, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

"The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers, filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as

required by the provisions of this Act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals."

Sec. 6. That a new section be added to said Act immediately after Section 16, to be numbered as Section 16a, as follows:

"Sec. 16a. That after a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may at any time, make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement, made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order."

Sec. 7. That Section 20 of said Act be amended so as to read as follows:

"Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital

stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

"Said forfeitures shall be covered in the manner pro-

vided for the recovery of forfeitures under the provisions of this Act.

“The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

“The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

“In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustees shall forfeit to the United States the sum of five hundred dollars for each such offense, and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

“Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term

not less than one year nor more than three years, or both such fine and imprisonment.

"Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

"That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to Regulate Commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

"And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

"That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such prop-

erty, as may be evidenced by any receipt, judgment, or transcript thereof."

Sec. 8. That a new section be added to said Act at the end thereof, to be numbered as Section 24, as follows:

"Sec. 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party."

Sec. 9. That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the Act to Regulate Commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

Sec. 10. That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed, but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Sec. 11. That this Act shall take effect and be in force from and after its passage.

(34 Statutes at Large, 584. C. 3591.)

APPENDIX 6.**Amendment, April 13, 1908.**

AN ACT to amend an Act entitled "An Act to amend an Act entitled 'An Act to Regulate Commerce, approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,' approved June twenty-ninth, nineteen hundred and six."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph four of section one of the Act entitled "An Act to amend an Act entitled 'An act to Regulate Commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six, be amended so that said paragraph as so amended will read as follows:

"No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation, to inmates of the National Homes or State Homes for disabled Volunteer Soldiers and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge and boards of managers of such Homes; to necessary caretakers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to

prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *Provided further*, That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and exemployees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars and any person other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three and any amendment thereof." (Approved April 13, 1908.)

35 Statutes at Large, 60. C., 143.

APPENDIX 7.

Amendment, February 25, 1909.

The Amendment of February 25, 1909, supplements Section 20 of the Act to include the following.

"That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved."

APPENDIX 8.**Act of June 18, 1910.**

AN ACT to create a commerce court, and to amend the Act entitled "An Act to Regulate Commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the commerce court.

The jurisdiction of the commerce court over cases of the foregoing classes shall be exclusive; but this Act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

The commerce court shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States, from among the circuit judges

of the United States, for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges to be appointed as hereinafter provided, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation of one of the said judges shall expire in each year thereafter. In case of the death, resignation, or termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve in the commerce court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of said court, and thereafter the judge senior in designation shall be the presiding judge.

Each of the judges during the period of his service in the commerce court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of one thousand five hundred dollars per annum.

The President shall, by and with the advice and consent of the Senate, appoint five additional circuit judges no two of whom shall be from the same judicial circuit, who shall hold office during good behavior and who shall be from time to time designated and assigned by the Chief Justice of the United States for service in the circuit court of any district, or the circuit court of appeals for any circuit, or in the commerce court.

The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their designations. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions.

The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appropriate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Supreme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and deputy marshal; and such clerk, marshal,

deputy clerk, and deputy marshal shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum; the salary of the marshal three thousand dollars per annum; the salary of the deputy clerk two thousand five hundred dollars per annum; and the salary of the deputy marshal two thousand five hundred dollars per annum. The said clerk and marshal may, with the approval of the court, employ all requisite assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid into the Treasury of the United States.

The commerce court shall be always open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia; but the powers of the court or of any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance elsewhere than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal by the marshal of the court, and shall be allowed to him in the statement of his accounts with the United States.

The United States marshals of the several districts outside of the city of Washington in which the commerce court may hold its sessions shall provide, under the direction and with the approval of the Attorney-General of the United States, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms cannot be provided in such public buildings, said marshals, with the approval of the Attorney-General of the United States, may then lease from time to time other necessary rooms for the court.

If, at any time, the business of the commerce court does not require the services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of Justice, terminate the assignment of any of the judges or temporarily assign him for service in any circuit

court or circuit court of appeals. In case of illness or other disability of any judge assigned to the commerce court the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigence therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

In all cases within its jurisdiction the commerce court, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a circuit court of the United States and of the judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The commerce court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duties to act for and in behalf of said court as pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the circuits of the United States.

The jurisdiction of the commerce court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the commerce court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and ob-

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jections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this Act, or by rule of the court, the practice and procedure in the commerce court shall conform as nearly as may be to that in like cases in a circuit court of the United States.

The commerce court shall be opened for the transaction of business at a date to be fixed by order of the said court, which shall be not later than thirty days after the judges thereof shall have been designated.

Sec. 2. That a final judgment or decree of the commerce court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a circuit court of the United States to the Supreme Court, and the commerce court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the commerce court as the case may require.

Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the commerce court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require.

An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the commerce court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree.

Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

Sec. 3. That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the commerce court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the commerce court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the commerce court otherwise than upon notice and after hearing, except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof may, on hearing after not less than three days' notice to the Interstate Commerce Commission and the Attorney-General, allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of such court or judge, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application.

Sec. 4. That all cases and proceedings in the commerce court which but for this Act would be brought by or against the Interstate Commerce Commission shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the commerce court whenever, though it has not been made a party, public interests are involved.

Sec. 5. That the Attorney-General shall have charge and control of the interests of the Government in all cases and proceedings in the commerce court, and in the Supreme Court of the United States upon appeal from the commerce court; and if in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensa-

tion, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: *Provided*, That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits: *Provided further*, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by any one under the terms of this Act, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, and the Attorney-General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or nonaction of the Attorney-General of the United States therein.

Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States.

Sec. 6. That until the opening of the commerce court as in section one hereof provided, all cases and proceedings of which from that time the commerce court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of the commerce court, appeal may be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the commerce court which may have been begun in any other court as hereby allowed before the said date shall be forthwith trans-

ferred to the commerce court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in such court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court, and if remanded such cause may be sent back to the court from which the appeal was taken or to the commerce court for further proceeding as the Supreme Court shall direct; and all previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the commerce court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in the commerce court. The clerk of the court from which any case or proceeding is so transferred to the commerce court shall transmit to and file in the commerce court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer.

It shall be the duty of every common carrier subject to the provisions of this Act, within sixty days after the taking effect of this Act, to designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for and on behalf of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or before said commerce court, and to file such designation in the office of the secretary of the Interstate Commerce Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personally upon such common carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Interstate Commerce Commission or commerce court may be made by posting such notice or process in the office of the secretary of the Interstate Commerce Commission.

Sec. 7. That section one of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby now amended so as to read as follows:

"Section 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the trans-

portation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.

“The term ‘common carrier’ as used in this Act shall include express companies and sleeping car companies. The term ‘railroad’ as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary

in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone, or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: *Provided*, That messages by telegraph, telephone, or cable, subject to the provisions of this Act, may be classified into day, night, repeated, unrepeatd, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: *And provided further*, That nothing in this Act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers, for the exchange of services.

"And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions

of this Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the States and with foreign countries is prohibited and declared to be unlawful.

“No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men’s Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers’ and Sailors’ Homes, including those about to enter and those returning home after discharge; to necessary caretakers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, or other calamitous visitation; *And provided further*, That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this Act: *Provided further*, That the term ‘employees’ as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of

a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood, and minor children during minority of persons who died, while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

"From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

"Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper

or owner of such lateral, branch line of railroad may make complaint to the commission, as provided in section thirteen of this Act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money."

Sec. 8. That section four of said Act to regulate commerce be amended so as to read as follows:

"Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided further,* That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.

"Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such

proposed increase rests upon changed conditions other than the elimination of water competition.”

Sec. 9. That section six of said Act to regulate commerce, as heretofore amended, is hereby now amended by adding four new paragraphs at the end thereof, as follows:

“The commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the commission shall be void and its use shall be unlawful.

“In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

“If any common carrier subject to the provisions of this Act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

“It shall be the duty of every carrier by railroad to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in

substantially the following form: 'The Station Agent of the _____ Company at _____ Station,' together with the name of the proper post-office, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office."

Sec. 10. That section ten of said Act to regulate commerce, as heretofore amended, be now amended so as to read as follows:

"Sec. 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

"Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misde-

meanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

“Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

“If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other

thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom."

Sec. 11. That section thirteen of said Act to regulate commerce be amended so as to read as follows:

"Sec. 13. That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

"Said commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State

or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

Sec. 12. That section fifteen of said Act to regulate commerce as heretofore amended, is hereby now amended so as to read as follows:

"Sec. 15. That whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or after full hearing under an order for investigation and hearing made by the commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this Act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for

such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

“Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Com-

merce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this Act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

"The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

"And in establishing such through route, the commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

"In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act provided to which through routes and through rates such carrier is a party, the person,

firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

"It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided,* That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

"Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

"The foregoing enumeration of powers shall not exclude any power which the commission would otherwise have in the making of an order under the provisions of this Act."

Sec. 13. That section sixteen of said Act to regulate commerce, as heretofore amended, is hereby now amended so as to read as follows:

"Sec. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit in the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any

subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or state court within one year from the date of the order, and not after.

"In such suits all parties in whose favor the commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs; against the defendant found to be liable to such plaintiff.

"Every order of the commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

"The commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

"It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

"Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

"The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating

office, or in any district through which the road of the carrier runs.

"It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

"The commission may employ such attorneys as it finds necessary for proper legal aid and service of the commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the commission's own instance or upon complaint, or to appear for and represent the commission in any case pending in the commerce court; and the expenses of such employment shall be paid out of the appropriation for the commission.

"If any carrier fails or neglects to obey any order of the commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney-General, may apply to the commerce court for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

"The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the commission, and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the commission's seal, shall be received in evidence with like effect as the originals."

Sec. 14. That section twenty of said Act to regulate com-

merce, as heretofore amended, is hereby amended by striking out the following paragraph:

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the commission it shall be subject to the forfeitures last above provided;"

And by inserting in lieu of the paragraph so stricken out the following:

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and ex-

penses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided."

Sec. 15. That nothing in this Act contained shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the Acts of said commission; and in any cases, proceedings, or matters now pending before it, the commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated; and nothing in this Act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation, or association.

Sec. 16. That the President is hereby authorized to appoint a commission to investigate questions pertaining to the issuance of stocks and bonds by railroad corporations, subject to the provisions of the Act to regulate commerce, and the power of Congress to regulate or affect the same, and to fix the compensation of the members of such commission. Said commission shall be and is hereby authorized to employ experts to aid in the work of inquiry and examination, and such clerks, stenographers, and other assistants as may be necessary, which employees shall be paid such compensation as the commission may deem just and reasonable upon a certificate to be issued by the chairman of the commission. The several departments and bureaus of the Government shall detail from time to time such officials and employees and furnish such information to the commission as may be directed by the President. For the purposes of its investigations the commission shall be authorized to incur and have paid upon the certificate of its chairman such expenses as the commission shall deem necessary: *Provided, however,* That the total expenses authorized or incurred under the provisions of this section for compensation, employees, or otherwise, shall not exceed the sum of twenty-five thousand dollars.

Sec. 17. That no interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute shall be

issued or granted by any justice of the supreme court, or by any circuit court of the United States, or by any judge thereof, or by any district judge acting as circuit judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit judge, or to a district judge acting as circuit judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court of the United States or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court of the United States, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court of the United States or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney-general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court of the United States, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall only remain in force until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken directly to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case.

Sec. 18. That this Act shall take effect and be in force from and after the expiration of sixty days after its passage, except as to sections twelve and sixteen, which sections shall take effect and be in force immediately.

Approved, June 18, 1910.

[Public—No. 218.]

[H. R. 17536.]

APPENDIX 9.

The Act to Regulate Commerce as Amended to Date.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. (*As amended June 29, 1906, April 13, 1908, and June 18, 1910.*) That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States to any other State, Territory, or District of the United States or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.

The term "common carrier" as used in this Act shall include express companies and sleeping car companies. The term

“railroad” as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term “transportation” shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone, or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: *Provided*, That messages by telegraph, telephone, or cable, subject to the provisions of this Act, may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: *And provided further*, That nothing in this Act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers for the exchange of services.

And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just

and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the States and with foreign countries is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary care takers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *And provided further*, That this provision shall not be construed to prohibit

the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this Act: *Provided further*; That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof. (*See Section 22.*)

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to con-

nect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

Sec. 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic

between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Sec. 4. ((*As amended June 18, 1910.*) That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided further,* That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

Sec. 5. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and com-

peting railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 6. (*Amended March 2, 1889. Following section substituted June 29, 1906. Amended June 18, 1910.*) That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight

for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

Every common carrier subject to this Act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been

filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are specified in such tariffs: *Provided*, That wherever the word "carrier" occurs in this Act it shall be held to mean "common carrier."

That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

The Commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Commission shall be void and its use shall be unlawful.

In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

If any common carrier subject to the provisions of this Act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through en-

tering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

It shall be the duty of every carrier by railroad to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in substantially the following form: "The Station Agent of the _____ Company at _____ Station," together with the name of the proper postoffice, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any postoffice.

Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

Sec. 8. That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Sec. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages, the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Sec. 10. (*As amended March 2, 1889, and June 18, 1910.*) That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof; or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbe-

fore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or

after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction, within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

Sec. 11. That a Commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for in-

efficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. (*See section 24, enlarging Commission and increasing salaries.*)

Sec. 12. (*As amended March 2, 1889, and February 10, 1891.*) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within

the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party, or his attorney, proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his discretion, and shall, after it has been reduced to writing, be subscribed by the deponent.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be

taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Witnesses whose depositions are taken pursuant to this Act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Sec. 13. (*As amended June 18, 1910.*) That any person, firm, corporation, company, or association or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act,

including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Sec. 14. (*Amended March 2, 1889, and June 29, 1906.*) That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

Sec. 15. (*As amended June 29, 1906, and June 18, 1910.*) That whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this Act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint clas-

sification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice, goes into effect, the Commission may make such order in reference to

such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this Act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

The Commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The Commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the Commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

And in establishing such through route, the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transporta-

tion subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided,* That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person

seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act.

Sec. 16. (*Amended March 2, 1889, June 29, 1906, and June 18, 1910.*) That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and

order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or state court within one year from the date of the order, and not after.

In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs against the defendant found to be liable for such plaintiff.

Every order of the Commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in

a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for and represent the Commission in any case pending in the commerce court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

If any carrier fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney-General, may apply to the Commerce Court for the enforcement of such order. If, after hearing, that Court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the Court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the Commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as *prima facie* evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals.

Sec. 16a. (*Added June 29, 1906.*) That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

Sec. 17. (*As amended March 2, 1889.*) That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.

Sec. 18. (*As amended March 2, 1889.*) [*See Section 24, increasing salaries of Commissioners.*] That each Commissioner

shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

Sec. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted, or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act.

Sec. 20. (*As amended June 29, 1906, February 25, 1909, and June 18, 1910.*) That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act; to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to

passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the Commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the Commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment:

Provided, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as

may be evidenced by any receipt, judgment, or transcript thereof.

Sec. 21. (*As amended March 2, 1889.*) That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

Sec. 22. (*As amended March 2, 1889, and February 8, 1895.*) [*See section 1, 4th par.*] That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this Act: *Provided further*, That nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this Act, shall issue any such joint interchangeable

mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this Act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this Act shall apply to any violation of the requirements of this proviso.

Sec. 23. (*Added March 2, 1889.*) That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the Act to which this is a supplement and all Acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held

to exclude or interfere with other remedies provided by this Act or the Act to which it is a supplement.

Sec. 24. (*Added June 29, 1906.*) That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party.

(*Additional provisions in Act of June 29, 1906.*) (Sec. 9.) That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the Act to regulate commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

(Sec. 10.) That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed; but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

(Sec. 11.) That this Act shall take effect and be in force from and after its passage.

Joint resolution of June 30, 1906, provides: "That the Act entitled 'An Act to amend an Act entitled "An Act to regulate commerce," approved February 4, 1887, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,' shall take effect and be in force sixty days after its approval by the President of the United States."

* * * * *

That this act shall take effect and be in force from and after the expiration of sixty days after its passage, except as to sections twelve [sec. 15 of Act to regulate commerce, p. 23 herein] and sixteen [sec. 16 of Commerce Court Act, p. 47 herein], which sections shall take effect and be in force immediately.

Public, No. 41, approved February 4, 1887, as amended by Public, No. 125, approved March 2, 1889, and Public, No. 72, approved February 10, 1891. Public, No. 38, approved February 8, 1895. Public, No. 337, approved June 29, 1906. Public Res., No. 47, approved June 30, 1906. Public, No. 95, approved April 13, 1908. Public, No. 262, approved February 25, 1909. Public, No. 218, approved June 18, 1910.

APPENDIX 10.

Immunity of Witnesses Act.

Act of February 11, 1893.

AN ACT In relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and amendments thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding:

Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

Public, No. 54, approved February 11, 1893 (27 Statutes at Large, 443).

Amendment of June 30, 1906.

AN ACT Defining the right of immunity of witnesses under the Act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, and an act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and an act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under the immunity provisions in the Act entitled "An Act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, in section six of the Act entitled "An Act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and in the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and in the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-

fifth, nineteen hundred and three, immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

Public No. 389, approved June 30, 1906 (34 Statutes at Large, 798).

APPENDIX 11.

Elkins Act, as Originally Enacted.

Sec. 1. That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concessions, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. In all convictions occurring after the passage of this Act for offenses under said Acts to regulate commerce, whether committed before or after the passage

of this Act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier acting within the scope of his employment shall in every case be also deemed to be the act, omission, or failure of such carrier as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereto, or participate in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this Act shall be conclusively deemed to be the legal rate and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

Sec. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Sec. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdic-

tion; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled An act to regulate commerce and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions of an Act entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and

monopolies,' 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Sec. 4. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this Act.

Sec. 5. That this Act shall take effect from its passage.
(32 Statutes at Large, 847. C. 708.)

APPENDIX 12.

Elkins Act as Amended to Date.

AN ACT To further regulate commerce with foreign nations and among the States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Sec. 1. (As amended June 29, 1906.) That anything done or omitted to be done by a corporation common carrier, subject to the act to regulate commerce and the acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent or person acting for or employed by such corporation, would constitute a misdemeanor under said acts or under this act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said acts or by this act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said acts to file and publish the tariffs or rates and charges as required by said acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any prop-

erty in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of this act, or the act to regulate commerce and the acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act.

Any person, corporation, or company who shall deliver prop-

erty for interstate transportation to any common carrier, subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this act, shall in addition to any penalty provided by this act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

Sec. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Sec. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight

traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said act approved February fourth, eighteen hundred and eighty-seven, entitled An act to regulate commerce and the acts amendatory thereof. And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding: *Provided*, That the provisions of an

act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted. approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Sec. 4. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed, but such repeal shall not affect causes now pending, nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this act.

Sec. 5. That this act shall take effect from its passage.

Public, No. 103, approved February 19, 1903, (32 Statutes at Large, 847), as amended June 29, 1906, (34 Statutes at Large, 584).

(See additional provisions in act of June 29, 1906, p. 32.)

APPENDIX 13.

Expediting Act.

AN ACT To expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opinion—
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ion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.

Sec. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

Public No. 82, approved February 11, 1903 (32 Statutes at Large, 823).

APPENDIX 14.

Government-Aided Railroad Act.

AN ACT Supplementary to the act of July first, eighteen hundred and sixty-two, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and also of the act of July second, eighteen hundred and sixty-four, and other acts amendatory of said first named act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain, or operate telegraph lines, and all companies en-

gaged in operating said railroad or telegraph lines shall forthwith and henceforward, by and through their own respective corporate officers and employees, maintain and operate, for railroad, Governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants as aforesaid.

Sec. 2. That whenever any telegraph company which shall have accepted the provisions of title sixty-five of the Revised Statutes shall extend its line to any station or office of a telegraph line belonging to any one of said railroad or telegraph companies, referred to in the first section of this act, said telegraph company so extending its line shall have the right and said railroad or telegraph company shall allow the line of said telegraph company so extending its line to connect with the telegraph line of said railroad or telegraph company to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies, referred to in the first section of this act, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company, or corporation whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms, and affording equal facilities, and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable.

Sec. 3. That if any such railroad or telegraph company referred to in the first section of this act, or company operating such railroad or telegraph line shall refuse or fail, in whole or in part, to maintain, and operate a telegraph line as provided in this act and acts to which this is supplementary. for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation, or connecting telegraph company may apply for relief to the Interstate Commerce Commission, whose duty it shall thereupon be, under such rules and regulations as said Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned shall abide by and perform such order; and it shall be the duty of the Interstate

Commerce Commission, when such determination and order are made, to notify the parties concerned, and, if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States, at the relation of either of said Interstate Commerce Commissioners: *Provided*, That the said Commissioners may institute any inquiry, upon their own motion, in the same manner and to the same effect as though complaint had been made.

Sec. 4. That in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to have the same possessed, used, and operated in conformity with the provisions of this act and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney-General of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of Congress relating to such railroads and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation.

Sec. 5. That any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the Government and the public equal facilities, or to secure to each of said connecting telegraph lines equal advantages and facilities in the interchange of business, as herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by, or perform and carry out within a reasonable time the order or orders of the Interstate Commerce Commission,

shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum not exceeding one thousand dollars, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the circuit or district court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such State or Territory, and such service shall be held by the court good and sufficient.

Sec. 6. That it shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days from and after the passage of this act, to file with the Interstate Commerce Commission copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines, or property over or upon its rights of way, and also a report describing with sufficient certainty the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim, and the manner in which the same are being then used and operated; and it shall be the duty of each and every one of said railroad and telegraph companies annually hereafter to report to the Interstate Commerce Commission, with reasonable fullness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said Commission shall prescribe; and if any of said railroad or telegraph companies shall refuse or fail to make such reports or any report as may be called for by said Commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand

dollars nor more than five thousand dollars, to be recovered by the Attorney-General of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the Interstate Commerce Commission to inform the Attorney-General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures hereinbefore provided.

Sec. 7. That nothing in this act shall be construed to affect or impair the right of Congress, at any time hereafter, to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal as, in the opinion of Congress, justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in the United States, or any authority that the Postmaster-General now has under title sixty-five of the Revised Statutes to fix rates, or, of the Government, to purchase lines as provided under said title, or to have its messages given precedence in transmission.

Public No. 237, approved August 7, 1888 (25 Statutes at Large, 382).

APPENDIX 15.

The Safety Appliance Acts.

Act of March 2, 1893.

AN ACT To promote the safety of employees and travelers upon railroads by compelling common carriers, engaged in interstate commerce, to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Sec. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

Sec. 3. That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

Sec. 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

Sec. 5. That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

Sec. 6. (*As amended April 1, 1896.*) That any such common

carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

Sec. 7. That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

Sec. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provision of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Public No. 113, approved March 2, 1893 (27 Statutes at Large, 531), as amended by an act approved April 1, 1896 (29 Statutes at Large, 85).

Note.—Prescribed standard height of drawbars: Standard-gauge roads, $34\frac{1}{2}$ inches; narrow-gauge roads, 26 inches; maximum variation between loaded and empty cars, 3 inches.

Amendment of March 2, 1903.

AN ACT To amend an act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers, engaged in interstate commerce, to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March

second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions and requirements of the act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six, shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section six of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, or which are used upon street railways.

Sec. 2. That whenever, as provided in said act, any train is operated with power or train brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

Sec. 3. That the provisions of this act shall not take effect until September first, nineteen hundred and three. Nothing

in this act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States district attorney from any of the provisions, powers, duties, liabilities, or requirements of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six; and all of the provisions, powers, duties, requirements, and liabilities of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, shall, except as specifically amended by this act, apply to this act.

Public, No. 133, approved March 2, 1903 (32 Statutes at Large, 943).

Amendment of April 14, 1910.

AN ACT To supplement "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes and for other purposes," and other safety appliance Acts and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to every common carrier and every vehicle subject to the Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, commonly known as the "Safety Appliance Acts."

Sec. 2. That on and after July first, nineteen hundred and eleven, it shall be unlawful for any common carrier subject to the provisions of this Act to haul, or permit to be hauled or used on its line any car subject to the provisions of this Act not equipped with appliances provided for in this Act, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand holds or grab irons on their roofs at the tops of such ladders: *Provided*, That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose.

Sec. 3. That within six months from the passage of this Act the Interstate Commerce Commission, after hearing, shall designate the number, dimensions, location, and manner of ap-

plication of the appliances provided for by section two of this Act and section four of the Act of March second, eighteen hundred and ninety-three, and shall give notice of such designation to all common carriers subject to the provisions of this Act by such means as the Commission may deem proper, and thereafter said number, location, dimensions, and manner of application as designated by said Commission shall remain as the standards of equipment to be used on all cars subject to the provisions of this Act, unless changed by an order of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of this Act: *Provided*, That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this Act. Said commission is hereby given authority, after hearing, to modify or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard so prescribed by the Commission.

Sec. 4. That any common carrier subject to this Act using, hauling, or permitting to be used or hauled on its line any car subject to the requirements of this Act not equipped as provided in this Act shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered as provided in section six of the Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six: *Provided*, That where any car shall have been properly equipped, as provided in this Act and the other Acts mentioned herein, and such equipment shall have become defective or insecure while such car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car can be repaired, without liability for the penalties imposed by section four of this Act or section six of the Act of March second, eighteen hundred and ninety-three, as amend-

ed by the Act of April first, eighteen hundred and ninety-six, if such movement is necessary to make such repairs and such repairs can not be made except at such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of this Act and the other Acts herein referred to; and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of draw-bars, in revenue trains or in association with other cars that are commercially used, unless such defective cars contain live stock or "perishable" freight.

Sec. 5. That except that, within the limits specified in the preceding section of this Act, the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in this Act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements of said Act of March second, eighteen hundred and ninety-three, as amended by the Acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three; and, except as aforesaid, all of the provisions, powers, duties, requirements, and liabilities of said Act of March second, eighteen hundred and ninety-three, as amended by the Acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, shall apply to this Act.

Sec. 6. That it shall be the duty of the Interstate Commerce Commission to enforce the provisions of this Act, and all powers heretofore granted to said Commission are hereby extended to it for the purpose of the enforcement of this Act.

Public, No. 133, approved, April 14, 1910. [H. R. 5703.]

Sundry civil act (appropriations) of June 28, 1902, authorizes Commission to employ "inspectors to execute and enforce the requirements of the safety-appliance act." (32 Statutes at Large, 444).

APPENDIX 16.**Block-Signal Resolution.**

JOINT RESOLUTION Directing the Interstate Commerce Commission to investigate and report on block-signal systems and appliances for the automatic control of railway trains.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Commission be, and it is hereby, directed to investigate and report on the use of and necessity for block-signal systems and appliances for the automatic control of railway trains in the United States. For this purpose the Commission is authorized to employ persons who are familiar with the subject, and may use such of its own employees as are necessary to make a thorough examination into the matter.

In transmitting its report to the Congress the Commission shall recommend such legislation as to the Commission seems advisable.

To carry out and give effect to the provisions of this resolution the Commission shall have power to issue subpoenas, administer oaths, examine witnesses, require the production of books and papers, and receive depositions taken before any proper officer in any State or Territory of the United States.

Public Resolution No. 46, approved June 30, 1906 (34 Statutes at Large, 838).

APPENDIX 17.**Interlocking Act.**

AN ACT To grant the right of way through the Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railway Company, and for other purposes.

* * * * *

Sec. 18. That when in any case two or more railroads crossing each other at a common grade shall, by a system of interlocking or automatic signals, or by any works or fixtures to be erected by them, render it safe for engines and trains to pass over such crossing without stopping, and such interlocking or automatic signals or works or fixtures shall be approved by the Interstate Commerce Commissioners, then, in that case, it is hereby made lawful for the engines and trains of such railroad or railroads to pass over such crossing without stopping, any law or the provisions of any law to the contrary notwithstanding; and when two or more railroads cross each

other at a common grade, either of such roads may apply to the Interstate Commerce Commissioners for permission to introduce upon both of said railroads some system of interlocking or automatic signals or works or fixtures rendering it safe for engines and trains to pass over such crossings without stopping, and it shall be the duty of said Interstate Commerce Commissioners, if the system of works and fixtures which it is proposed to erect by said company are, in the opinion of the Commission, sufficient and proper, to grant such permission.

Sec. 19. That any railroad company which has obtained permission to introduce a system of interlocking or automatic signals at its crossing at a common grade with any other railroad, as provided in the last section, may, after thirty days' notice, in writing, to such other railroad company, introduce and erect such interlocking or automatic signal or fixtures; and if such railroad company, after such notification, refuses to join with the railroad company giving notice in the construction of such works or fixtures, it shall be lawful for said company to enter upon the right of way and tracks of such second company, in such manner as to not unnecessarily impede the operation of such road, and erect such works and fixtures, and may recover in any action at law from such second company one-half of the total cost of erecting and maintaining such interlocking or automatic signals or works or fixtures on both of said roads.

* * * * *

Public No. 26, approved February 28, 1902 (32 Statutes at Large, 50).

APPENDIX 18.

Accident-Reports Act.

AN ACT Requiring common carriers engaged in interstate and foreign commerce to make full reports of all accidents to the Interstate Commerce Commission, and authorizing investigations thereof by said Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate or foreign commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all col-

lisions, derailments, or other accidents resulting in injury to persons, equipment, or roadbed arising from the operation of such railroad under such rules and regulations as may be prescribed by the said Commission, which report shall state the nature and causes thereof and the circumstances connected therewith: *Provided*, That hereafter all said carriers shall be relieved from the duty of reporting accidents in their annual financial and operating reports made to the Commission.

Sec. 2. That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same.

Sec. 3. That the Interstate Commerce Commission shall have authority to investigate all collisions, derailments, or other accidents resulting in serious injury to person or to the property of a railroad occurring on the line of any common carrier engaged in interstate or foreign commerce by railroad. The Commission, or any impartial investigator thereunto authorized by said Commission, shall have authority to investigate such collisions, derailments, or other accidents aforesaid, and all the attending facts, conditions, and circumstances, and for that purpose may subpoena witnesses, administer oaths, take testimony, and require the production of books, papers, orders, memoranda, exhibits, and other evidence, and shall be provided by said carriers with all reasonable facilities: *Provided*, That when such accident is investigated by a commission of the State in which it occurred, the Interstate Commerce Commission shall, if convenient, make any investigation it may have previously determined upon, at the same time as, and in connection with, the state commission investigation. Said Commission shall, when it deems it to the public interest, make reports of such investigations, stating the cause of accident, together with such recommendations as it deems proper. Such reports shall be made public in such manner as the Commission deems proper.

Sec. 4. That neither said report nor any report of said investigation nor any part thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation.

Sec. 5. That the Interstate Commerce Commission is au-

thorized to prescribe for such common carriers a method and form for making the reports hereinbefore provided.

Sec. 6. That the Act entitled "An Act requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission," approved March third, nineteen hundred and one, is hereby repealed.

Sec. 7. That the term "interstate commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, and the term "foreign commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any foreign country and from any foreign country to any State or Territory or the District of Columbia.

Sec. 8. That this Act shall take effect sixty days after its passage.

Public, No. 165, approved, May 6, 1910.

APPENDIX 19.

Coal and Oil Resolutions.

Act of March 7, 1906.

JOINT RESOLUTION Instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies in coal and oil, and report on the same from time to time.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Commission be, and is hereby, authorized and instructed immediately to inquire, investigate, and report to Congress, or to the President when Congress is not in session, from time to time as the investigation proceeds—

First. Whether any common carriers by railroad, subject to the interstate-commerce act, or either of them, own or have any interest in, by means of stock ownership in other corporations or otherwise, any of the coal or oil which they, or either of them, directly or through other companies which they control or in which they have an interest, carry over their or any of their lines as common carriers, or in any manner own, control, or have any interest in coal lands or properties or oil lands or properties.

Second. Whether the officers of any of the carrier companies aforesaid, or any of them, or any person or persons

charged with the duty of distributing cars or furnishing facilities to shippers are interested, either directly or indirectly, by means of stock ownership or otherwise in corporations or companies owning, operating, leasing, or otherwise interested in any coal mines, coal properties, or coal traffic, oil, oil properties, or oil traffic over the railroads with which they or any of them are connected or by which they or any of them are employed.

Third. Whether there is any contract, combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce among the several States, in which any common carrier engaged in the transportation of coal or oil is interested, or to which it is a party; and whether any such common carrier monopolizes or attempts to monopolize, or combines or conspires with any other carrier, company or companies, person or persons to monopolize any part of the trade or commerce in coal or oil, or traffic therein among the several States or with foreign nations, and whether or not, and if so, to what extent, such carriers, or any of them, limit or control, directly or indirectly, the output of coal mines or the price of coal and oil fields or the price of oil.

Fourth. If the Interstate Commerce Commission shall find that the facts or any of them set forth in the three paragraphs above do exist, then that it be further required to report as to the effect of such relationship, ownership, or interest in coal or coal properties and coal traffic, or oil, oil properties, or oil traffic aforesaid, or such contracts or combinations in form of trust or otherwise, or conspiracy or such monopoly or attempt to monopolize or combine or conspire as aforesaid, upon such person or persons as may be engaged independently of any other persons in mining coal or producing oil and shipping the same, or other products, who may desire to so engage, or upon the general public as consumers of such coal or oil.

Fifth. That said Commission be also required to investigate and report the system of car supply and distribution in effect upon the several railway lines engaged in the transportation of coal or oil as aforesaid, and whether said systems are fair and equitable, and whether the same are carried out fairly and properly; and whether said carriers, or any of them discriminate against shippers or parties wishing to become shippers over their several lines, either in the matter of distribution of cars or in furnishing facilities or instrumentalities connected with receiving, forwarding, or carrying coal or oil as aforesaid.

Sixth. That said Commission be also required to report as to what remedy it can suggest to cure the evils above set forth, if they exist.

Seventh. That said Commission be also required to report any facts or conclusions which it may think pertinent to the general inquiry above set forth.

Eighth. That said Commission be required to make this investigation at its earliest possible convenience and to furnish the information above required from time to time and as soon as it can be done consistent with the performance of its public duty.

Public Res. No. 8, approved March 7, 1906 (34 Statutes at Large, 823).

Amendment of March 21, 1906.

JOINT RESOLUTION Amending joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies, and report on the same from time to time, approved March seventh, nineteen hundred and six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies, and report on the same from time to time, approved March seventh, nineteen hundred and six, is hereby amended by adding the following thereto:

Ninth. To enable the Commission to perform the duties required and accomplish the purposes declared herein, the Commission shall have and exercise under this joint resolution the same power and authority to administer oaths, to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence, and to obtain full information, which said Commission now has under the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and acts amendatory thereof or supplementary thereto now in force or may have under any like statute taking effect hereafter. All the requirements, obligations, liabilities, and immunities imposed or conferred by said act to regulate commerce and by "An act in relation to testimony before the Interstate Commerce Commission in cases under or connected with an act entitled 'An act to regulate commerce' approved February fourth, eighteen hundred and eighty-seven, and amendments thereto," approved February eleventh, eighteen hundred and ninety-three, shall also apply to all persons who

may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority herein conferred.

Public Res. No. 11, approved March 21, 1906 (34 Statutes at Large, 824).

APPENDIX 20.

Arbitration Act.

AN ACT Concerning carriers engaged in interstate commerce and their employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

The term "employees" as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: *Provided, however, That* this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of

said carrier either to the public or to the private parties concerned.

Sec. 2. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between a carrier subject to this act and the employees of such carrier, seriously interrupting or threatening to interrupt the business of said carrier, the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall, upon the request of either party to the controversy, with all practicable expedition, put themselves in communication with the parties to such controversy, and shall use their best efforts, by mediation and conciliation, to amicably settle the same; and if such efforts shall be unsuccessful, shall at once endeavor to bring about an arbitration of said controversy in accordance with the provisions of this act.

Sec. 3. That whenever a controversy shall arise between a carrier subject to this act and the employees of such carrier which can not be settled by mediation and conciliation in the manner provided in the preceding section, said controversy may be submitted to the arbitration of a board of three persons, who shall be chosen in the manner following: One shall be named by the carrier or employer directly interested; the other shall be named by the labor organization to which the employees directly interested belong, or, if they belong to more than one, by that one of them which specially represents employees of the same grade and class and engaged in services of the same nature as said employees so directly interested: *Provided, however,* That when a controversy involves and affects the interests of two or more classes and grades of employees belonging to different labor organizations, such arbitrator shall be agreed upon and designated by the concurrent action of all such labor organizations; and in cases where the majority of such employees are not members of any labor organization, said employees may by a majority vote select a committee of their own number, which committee shall have the right to select the arbitrator on behalf of said employees. The two thus chosen shall select the third commissioner of arbitration; but, in the event of their failure to name such arbitrator within five days after their first meeting, the third arbitrator shall be named by the commissioners named in the preceding section. A majority of said arbitrators shall be competent to make a valid and binding award under the provisions hereof. The submission shall be in writing, shall be signed by the employer and by the labor organization representing the employees, shall specify the time and

place of meeting of said board of arbitration, shall state the questions to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate, as follows:

First. That the board of arbitration shall commence their hearings within ten days from the date of the appointment of the third arbitrator, and shall find and file their award, as provided in this section, within thirty days from the date of the appointment of the third arbitrator; and that pending the arbitration the status existing immediately prior to the dispute shall not be changed: *Provided*, That no employee shall be compelled to render personal service without his consent.

Second. That the award and the papers and proceedings, including the testimony relating thereto certified under the hands of the arbitrators and which shall have the force and effect of a bill of exceptions, shall be filed in the clerk's office of the circuit court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon both parties, unless set aside for error of law apparent on the record.

Third. That the respective parties to the award will each faithfully execute the same, and that the same may be specifically enforced in equity so far as the powers of a court of equity permit: *Provided*, That no injunction or other legal process shall be issued which shall compel the performance by any laborer against his will of a contract for personal labor or service.

Fourth. That employees dissatisfied with the award shall not by reason of such dissatisfaction quit the service of the employer before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of their intention so to quit. Nor shall the employer dissatisfied with such award dismiss any employee or employees on account of such dissatisfaction before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of his intention so to discharge.

Fifth. That said award shall continue in force as between the parties thereto for the period of one year after the same shall go into practical operation, and no new arbitration upon the same subject between the same employer and the same class of employees shall be had until the expiration of said one year if the award is not set aside as provided in section four. That as to individual employees not belonging to the

labor organization or organizations which shall enter into the arbitration, the said arbitration and the award made therein shall not be binding, unless the said individual employees shall give assent in writing to become parties to said arbitration.

Sec. 4. That the award being filed in the clerk's office of a circuit court of the United States, as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent upon the record, in which case said award shall go into practical operation and judgment be entered accordingly when such exceptions shall have been finally disposed of either by said circuit court or on appeal therefrom.

At the expiration of ten days from the decision of the circuit court upon exceptions taken to said award, as aforesaid, judgment shall be entered in accordance with said decision unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided.

The determination of said circuit court of appeals upon said questions shall be final, and being certified by the clerk thereof to said circuit court, judgment pursuant thereto shall thereupon be entered by said circuit court.

If exceptions to an award are finally sustained, judgment shall be entered setting aside the award. But in such case the parties may agree upon a judgment to be entered disposing of the subject-matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Sec. 5. That for the purposes of this act the arbitrators herein provided for, or either of them, shall have power to administer oaths and affirmations, sign subpoenas, require the attendance and testimony of witnesses, and the production of such books, papers, contracts, agreements, and documents material to a just determination of the matters under investigation as may be ordered by the court; and may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements and documents to the same extent and under the same conditions and penalties as is provided for in the act to

regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto.

Sec. 6. That every agreement of arbitration under this act shall be acknowledged by the parties before a notary public or clerk of a district or circuit court of the United States, and when so acknowledged a copy of the same shall be transmitted to the chairman of the Interstate Commerce Commission, who shall file the same in the office of said Commission.

Any agreement of arbitration which shall be entered into conforming to this act, except that it shall be executed by employees individually instead of by a labor organization as their representative, shall, when duly acknowledged as herein provided, be transmitted to the chairman of the Interstate Commerce Commission, who shall cause a notice in writing to be served upon the arbitrators, fixing a time and place for a meeting of said board, which shall be within fifteen days from the execution of said agreement of arbitration: *Provided, however,* That the said chairman of the Interstate Commerce Commission shall decline to call a meeting of arbitrators under such agreement unless it be shown to his satisfaction that the employees signing the submission represent or include a majority of all employees in the service of the same employer and of the same grade and class, and that an award pursuant to said submission can justly be regarded as binding upon all such employees.

Sec. 7. That during the pendency of arbitration under this act it shall not be lawful for the employer, party to such arbitration, to discharge the employees, parties thereto, except for inefficiency, violation of law, or neglect of duty; nor for the organization representing such employees to order, nor for the employees to unite in, aid, or abet, strikes against said employer; nor, during a period of three months after an award under such an arbitration, for such employer to discharge any such employees, except for the causes aforesaid, without giving thirty days' written notice of an intent so to discharge; nor for any of such employees, during a like period, to quit the service of said employer without just cause, without giving to said employer thirty days' written notice of an intent so to do; nor for such organization representing such employees to order, counsel, or advise otherwise. Any violation of this section shall subject the offending party to liability for damages: *Provided,* That nothing herein contained shall be construed to prevent any employer, party to such arbitration, from reducing the number of its or his employees when-

ever in its or his judgment business necessities require such reduction.

Sec. 8. That in every incorporation under the provisions of chapter five hundred and sixty-seven of the United States Statutes of eighteen hundred and eighty-five and eighteen hundred and eighty-six it must be provided in the articles of incorporation and in the constitution, rules, and by-laws that a member shall cease to be such by participating in or by instigating force or violence against persons or property during strikes, lockouts, or boycotts, or by seeking to prevent others from working through violence, threats, or intimidations. Members of such incorporations shall not be personally liable for the acts, debts, or obligations of the corporations, nor shall such corporations be liable for the acts of members or others in violation of law; and such corporations may appear by designated representatives before the board created by this act, or in any suits or proceedings for or against such corporations or their members in any of the Federal courts.

Sec. 9. That whenever receivers appointed by Federal courts are in the possession and control of railroads, the employees upon such railroads shall have the right to be heard in such courts upon all questions affecting the terms and conditions of their employment, through the officers and representatives of their associations, whether incorporated or unincorporated, and no reduction of wages shall be made by such receivers without the authority of the court therefor upon notice to such employees, said notice to be not less than twenty days before the hearing upon the receivers' petition or application, and to be posted upon all customary bulletin boards along or upon the railway operated by such receiver or receivers.

Sec. 10. That any employer subject to the provisions of this act and any officer, agent, or receiver of such employer who shall require any employee, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in such a labor corporation, association, or organization; or who shall require any employee or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes; to release such employer from legal liability for any personal injury

by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund; or who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars.

Sec. 11. That each member of said board of arbitration shall receive a compensation of ten dollars per day for the time he is actually employed, and his traveling and other necessary expenses; and a sum of money sufficient to pay the same, together with the traveling and other necessary and proper expenses of any conciliation or arbitration had hereunder, not to exceed ten thousand dollars in any one year, to be approved by the chairman of the Interstate Commerce Commission and audited by the proper accounting officers of the Treasury, is hereby appropriated for the fiscal years ending June thirtieth, eighteen hundred and ninety-eight, and June thirtieth, eighteen hundred and ninety-nine, out of any money in the Treasury not otherwise appropriated.

Sec. 12. That the act to create boards of arbitration or commission for settling controversies and differences between railroad corporations and other common carriers engaged in interstate or territorial transportation of property or persons and their employees, approved October first, eighteen hundred and eighty-eight, is hereby repealed.

Public No. 115, approved June 1, 1898 (30 Statutes at Large, 424).

APPENDIX 21.

Medal of Honor Act.

AN ACT To promote the security of travel upon railroads engaged in interstate commerce, and to encourage the saving of life.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized to cause to be prepared bronze medals of honor, with suitable emblematic devices, which shall be bestowed upon any persons who shall hereafter, by extreme daring, endanger

their own lives in saving, or endeavoring to save lives, from any wreck, disaster, or grave accident, or in preventing or endeavoring to prevent such wreck, disaster, or grave accident, upon any railroad within the United States engaged in interstate commerce: *Provided*, That no award of said medal shall be made to any person until sufficient evidence of his deserving shall have been furnished and placed on file, under such regulations as may be prescribed by the President of the United States.

Sec. 2. That the President of the United States be, and he is hereby, authorized to issue to any person to whom a medal of honor may be awarded under the provisions of this Act a rosette or knot, to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette or knot and ribbon to be each of a pattern to be prescribed by the President of the United States: *Provided*, That whenever a ribbon issued under the provisions of this Act shall have been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued, a new ribbon shall be issued to such person without charge therefor.

Sec. 3. That the appropriations for the enforcement and execution of the provisions of the Acts to promote the safety of employees and travelers upon railroads are hereby made available for carrying out the provisions of this Act.

Public, No. 98, approved February 23, 1905 (33 Statutes at Large, 743).

APPENDIX 22.

Regulations Governing the Award of Life-Saving Medals under the Medal of Honor Act.

Made by the President of the United States on March 29, 1905.

1. Applications for medals under this act should be addressed to and filed with the Interstate Commerce Commission, at the city of Washington, D. C. Satisfactory evidence of the facts upon which the application is based must be filed in each case. This evidence should be in the form of affidavits made by eyewitnesses, of good repute and standing, testifying of their own knowledge. The opinion of witnesses that the person for whom an award is sought acted with extreme daring and endangered his life is not sufficient, but the affidavits must set forth the facts in detail and show clearly in what manner and to what extent life was endangered and extreme daring exhibited. The railroad upon which the incident occurred, the date, time of day, condition of the weather, the

names of all persons present when practicable, and other pertinent circumstances should be stated. The affidavits should be made before an officer duly authorized to administer oaths and be accompanied by the certificate of some United States official of the district in which the affiants reside, such as a judge or clerk of United States court, district attorney, or postmaster, to the effect that the affiants are reputable and credible persons. If the affidavits are taken before an officer without an official seal his official character must be certified by the proper officers of a court of record under the seal thereof.

2. Applications for medals, together with all affidavits and other evidence received in connection therewith, shall be referred to a committee of five persons, consisting of the secretary of the Commission, the chief inspector of safety appliances, two inspectors of safety appliances designated by the Commission, and the clerk of the safety-appliance examining board, who shall act as clerk of the committee. This committee shall carefully consider each application presented and, after thoroughly weighing the evidence, shall prepare an abstract or brief covering the case and file the same, together with the committee's recommendation, with the Commission, which brief and recommendation shall be transmitted by the Commission to the President for his approval. The committee may, with the approval of the Commission, direct any inspector of safety appliances in the employ of the Commission to proceed to the locality where the service was performed for which a medal is claimed, and make a personal investigation and report upon the facts of the case, which report shall be filed and made a part of the evidence considered by the committee.

3. Upon final approval of the committee's recommendation by the President the Commission shall take such measures to carry the recommendation into effect as the President may direct.

4. The Commission shall cause designs to be prepared for the medal, rosette, and ribbon provided for by the act, which designs shall be submitted to the President for his approval.

APPENDIX 23.

Lake Erie and Ohio River Ship Canal Act.

AN ACT To incorporate the Lake Erie and Ohio River Ship Canal, to define the powers thereof, and to facilitate interstate commerce.

* * * * *

Sec. 17. That the said canals shall be open to the use and navigation of all suitable and proper vessels or other water craft, by whomsoever owned or operated, upon fair and equal terms, conditions, rates, tolls, and charges; and the said company may demand, take, and recover for its own proper use, for all persons and things of whatsoever description transported upon the said canals, feeders, and other works, or in vessels and craft using the same, just and reasonable charges, rates, and tolls; but all such charges, rates, and tolls shall be equal to all persons, vessels, and goods under certain classifications to be established by the company and approved by the Interstate Commerce Commission; and no rebate, reduction, drawback, or discrimination of any sort on such charges, rates, and tolls shall ever be made directly or indirectly. And the said charges, rates, and tolls for the ensuing year shall be fixed, published, and posted on or in every place where they are to be collected, on or before the fifteenth day of February of each year, and shall not be changed except after thirty days' public notice, which notice shall plainly state the changes proposed to be made in the charges, rates, and tolls then in force and the time when the changed charges, rates, and tolls will go into effect; and the proposed changes shall be shown by printing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the Interstate Commerce Commission may, in its discretion and for good cause shown, allow changes upon less notice than herein specified or modify the foregoing requirements in respect to publishing and posting of such schedules, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

* * * * *

Public No. 402, approved June 30, 1906 (34 Statutes at Large, 809).

APPENDIX 24.

Hours of Service Act.

AN ACT To promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad in

the District of Columbia or any Territory of the United States, or from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States. The term "railroad," as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "employees" as used in this Act shall be held to mean persons actually engaged in or connected with the movement of any train.

Sec. 2. That it shall be unlawful for any common carrier, its officers or agents, subject to this Act to require or permit any employee subject to this Act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having at least eight consecutive hours off duty: *Provided*, That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week: *Provided further*, The Interstate Commerce Commission may after full hearing in a particular case and for good cause shown extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

Sec. 3. That any such common carrier, or any officer, or agent thereof, requiring or permitting any employee to go,

be, or remain on duty in violation of the second section hereof, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of one year from the date of such violation; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge. In all prosecutions under this Act the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: *Provided*, That the provisions of this Act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen: *Provided further*, That the provisions of this Act shall not apply to the crews of wrecking or relief trains.

Sec. 4. It shall be the duty of the Interstate Commerce Commission to execute and enforce the provisions of this Act, and all powers granted to the Interstate Commerce Commission are hereby extended to it in the execution of this Act.

Sec. 5. That this Act shall take effect and be in force one year after its passage.

Public No. 274, approved March 4, 1907, 11.50 a. m. (34 Statutes at Large, 1415).

APPENDIX 25.

Ash Pan Act.

AN ACT To promote the safety of employees on railroads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the first day of January, nineteen hundred and ten, it shall be unlawful for any common carrier engaged in interstate or foreign commerce by railroad to use any locomotive in moving interstate or foreign traffic, not equipped with an ash pan, which can be dumped or emptied and

cleaned without the necessity of any employee going under such locomotive.

Sec. 2. That on and after the first day of January, nineteen hundred and ten, it shall be unlawful for any common carrier by railroad in any Territory of the United States or the District of Columbia to use any locomotive not equipped with an ash pan, which can be dumped or emptied and cleaned without the necessity of any employee going under such locomotive.

Sec. 3. That any such common carrier using any locomotive in violation of any of the provisions of this Act shall be liable to a penalty of two hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge.

Sec. 4. That it shall be the duty of the Interstate Commerce Commission to enforce the provisions of this Act, and all powers heretofore granted to said Commission are hereby extended to it for the purpose of the enforcement of this Act.

Sec. 5. That the term "common carrier" as used in this Act shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier

Sec. 6. That nothing in this Act contained shall apply to any locomotive upon which, by reason of the use of oil, electricity, or other such agency, an ash pan is not necessary.

Public No. 165, approved May 30, 1908 (35 Statutes at Large, 476).

APPENDIX 26.

Transportation of Explosives Act.

Act of March 4, 1909, effective January 1, 1910.

By an act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909, to take effect and be in force on and after the first day of January, 1910, the act entitled "An act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation,"

approved May 30, 1908, is repealed, and the following sections of said act to codify, revise, and amend the penal laws of the United States are substituted therefor:

Sec. 232. It shall be unlawful to transport, carry, or convey, any dynamite, gunpowder, or other explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire: *Provided*, That it shall be lawful to transport on any such vessel or vehicle small arms, ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time in a single vessel or vehicle; but such samples shall not be carried in that part of a vessel or vehicle which is intended for the transportation of passengers for hire: *Provided further*, That nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels or vehicles.

Sec. 233. The Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives, which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land. Said Commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regulations, made desirable by new information or altered conditions. Such regulations shall be in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport. Such regulations, as well as all changes or modifications thereof, shall take effect ninety days after their formulation and publication by said Commission and shall be in effect until reversed, set aside, or modified.

Sec. 234. It shall be unlawful to transport, carry, or convey, liquid nitroglycerine, fulminate in bulk in dry country and

other like explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between place in one State, Territory, or District of the United States, or a place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water.

Sec. 235. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof; and it shall be unlawful for any person to deliver, or cause to be delivered, to any common carrier engaged in interstate or foreign commerce by land or water, for interstate or foreign transportation, or to carry upon any vessel or vehicle engaged in interstate or foreign transportation, any explosive, or other dangerous article, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery or carriage is made. Whoever shall knowingly violate, or cause to be violated, any provision of this section, or of the three sections last preceding, or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both.

Sec. 236. When the death or bodily injury of any person is caused by the explosion of any article named in the four sections last preceding, while the same is being placed upon any vessel or vehicle to be transported in violation thereof, or while the same is being so transported, or while the same is being removed from such vessel or vehicle, the person knowingly placing, or aiding or permitting the placing, of such articles upon any such vessel or vehicle, to be so transported, shall be imprisoned not more than ten years.

Public, No. 350, approved March 4, 1909, effective January 1, 1910.

APPENDIX 27.

District of Columbia Street Railways Act.

AN ACT Authorizing certain extensions to be made of the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Rail-
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way of Washington, and the Capital Traction Company, in the District of Columbia, and for other purposes.

* * * * *

Sec. 12. That existing transfer arrangements between the Washington Railway and Electric Company and the Metropolitan Coach Company, a corporation of the District of Columbia, shall not be terminated, except by authority of Congress; and unless said Metropolitan Coach Company shall, within one year after the passage of this Act, substitute motor vehicles to be approved by the Commissioners of the District of Columbia, for the herdies now used by it, its right to operate its line shall cease and determine: *Provided further*, That all transfers issued by the Metropolitan Coach Company shall be properly dated and punched as to time limit as provided by rules and regulations to be made, altered, and amended from time to time by the Interstate Commerce Commission, and that unless said transfers are so dated and punched the Washington Railway and Electric Company shall not be required to receive them.

* * * * *

Sec. 16. That every street railroad company or corporation owning, controlling, leasing or operating one or more street railroads within the District of Columbia shall on each and all of its railroads supply and operate a sufficient number of cars, clean, sanitary, in good repair, with proper and safe power, equipment, appliances and service, comfortable and convenient, and so operate the same as to give expeditious passage, not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs, to all persons desirous of the use of said cars, without crowding said cars. The Interstate Commerce Commission is hereby given power to require and compel obedience to all of the provisions of this section, and to make, alter, amend and enforce all needful rules and regulations to secure said obedience; and said Commission is given power to make all such orders and regulations necessary to the exercise of the powers herein granted to it as may be reasonable and proper; and such railroad companies or corporations, their officers and employees, are hereby required to obey all the provisions of this section, and such regulations and orders as may be made by said Commission. Any such company or corporation, or its officers or employees, violating any provision of this section, or any of the said orders or regulations made by said Commission, or permitting such violation, shall be punished by a fine of not more than

one thousand dollars. And each day of failure or neglect on the part of such company or corporation, its officers or employees, to obey each and all of the provisions and requirements of this section, or the orders and regulations of the Commission made thereunder, shall be regarded as a separate offense.

Sec. 17. That prosecutions for violations of any of the provisions of this Act shall be on information of the Interstate Commerce Commission filed in the police court by or on behalf of the Commission.

* * * * *

Public No. 134, approved May 23, 1908 (35 Statutes at Large, 246).

APPENDIX 28.

AN ACT Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and ten, and for other purposes.

* * * * *

On and after the passage of this Act every corporation engaged in the manufacture and sale of gas or electricity in the District of Columbia shall open and keep a set of books in manner and form prescribed by the Interstate Commerce Commission.

* * * * *

Public No. 303, approved March 3, 1909 (36 Statutes at Large, —).

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